

Volume 7

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	NO. CR 14-102-CRB
)	
IAN FURMINGER and EDMOND ROBLES,)	
)	San Francisco, California
Defendants.)	Tuesday
)	November 18, 2014
)	8:34 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Official Reporters, U.S. District Court

(Appearances continued, next page)

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HEATHER KELLY, ESQ.

Also Present:

Defendant Ian Furminger
Defendant Edmond Robles
Special Agent Melissa Patrick
Special Agent Sandra Flores
Dalida Vartanian
Stephen Janick
Alycee Lane
Tony Brass, Esq.

1 **NOVEMBER 18, 2014**

8:34 A.M.

2 **P R O C E E D I N G S**

3 (The following proceedings were held in open court,
4 outside the presence of the jury:)

5 **THE COURT:** Good morning, everybody.

6 Let the record reflect the parties are present, the jury
7 is not. Thank you very much for being here promptly.

8 So there are two issues, perhaps some unrelated issues as
9 well, but two principal avenues of inquiry that the parties
10 have agreed would be -- or it appears that the parties would
11 bring up, that the defense would certainly bring it up, and if
12 the defense is going to bring it up, the government wants the
13 opportunity to inquire into it.

14 So let me -- let me say it again, as I said it last night,
15 what I understand it would be. I understand as to issue number
16 one that, if asked, the witness would admit that he lied to a
17 police investigative agency on the details of an arrest in
18 which the issue was whether he used excessive force in
19 connection with the arrest. That's issue number one.

20 **MR. HEMANN:** Correct.

21 **THE COURT:** Okay. The government wishes to -- if that
22 evidence comes in -- and I believe it does -- the government
23 wants the opportunity to inquire into it on direct as they
24 would with a felony conviction as an example of a witness that
25 they call. And that's as to issue number one.

1 As to issue number two, there is evidence that the witness
2 on, I guess, multiple occasions submitted false time sheets.
3 Are they time sheets or claims or --

4 **MR. HEMANN:** They are --

5 **MS. CAFFESE:** Cards.

6 **MR. HEMANN:** They're court time compensation cards --

7 **THE COURT:** Court --

8 **MR. HEMANN:** -- is how --

9 **THE COURT:** So it's -- well, they are time sheets.

10 **MR. HEMANN:** They're time sheets, basically. That's a
11 fair way to say it.

12 **THE COURT:** They are a form of time sheets.

13 **MR. HEMANN:** Yes, they are, Your Honor.

14 **THE COURT:** Okay. Time sheets -- we can find out what
15 the words are -- which he will -- the accusation is that on
16 numerous occasions over some period of time he submitted false
17 time sheets. And he, if asked the question, would deny it, or
18 I don't know what he would do.

19 But the first question is: Can that be inquired into?
20 And the answer, in my view, is, yes, it can be inquired into.

21 Now, when I say "inquired into," I want to be very careful
22 about the -- the degree to which it can be inquired into; that
23 is to say, there are certain things that I think can be
24 inquired into as it relates to that subject and certain things
25 that cannot.

1 An example of what cannot be inquired into is any
2 adjudication of either of those two incidences; that is, that
3 an OCC officer or a police commission or some adjudicative body
4 made a determination that, in fact, it's true he used excessive
5 force or, in fact, it's true he lied about the arrest, or, yes,
6 it's true he submitted false documentation. None of that can
7 be -- is admissible. That's number one.

8 Number two, in the Court's view, under 608, none of the --
9 and after reviewing document number 123, which is submitted on
10 Mr. Robles' behalf, none of that evidence, which is extrinsic
11 evidence, is admissible.

12 That is to say the time cards, a witness as to either of
13 the incidences or the incident, number one, or the false
14 claims, number two, can be inquired into -- can be elicited.

15 So I think -- I think that the testimony would be
16 something like this. And I think I'd like to try to have, now,
17 a discussion about it.

18 I think that the defense and, in my view, the prosecution
19 may elicit from Vargas that he lied to an OCC investigator in
20 connection with an arrest that involved the use of excessive
21 force. That's number one.

22 I think that the defense and, indeed, the prosecution may
23 ask the witness whether he submitted false time cards in
24 connection with his duties as a police officer.

25 I think the defense and, again, the prosecution may ask

1 how many false time cards Vargas submitted and over what period
2 of time, covering what period of time.

3 So that's what I think is admissible in evidence. What I
4 think is not admissible are all the other things that I
5 mentioned. Okay.

6 So I can hear from the parties if you need a clarification
7 or if you want to argue it further. I have to tell you I have
8 read what you submitted in this regard, so -- and I took a look
9 at Ninth Circuit law. Not a lot on all of this, but I think
10 this complies with 608.

11 **MR. HEMANN:** The clarification I would request, Your
12 Honor, is that I believe that what officer -- Mr. Vargas will
13 say in response to the question about the time cards is, "I did
14 not believe they were false, I came to learn that they were
15 incorrect," or something like that.

16 **THE COURT:** He can say whatever he chooses to say. In
17 other words -- and that's what -- whatever his answer is, is
18 his answer. And I don't believe that extrinsic evidence can be
19 introduced to contradict that answer.

20 **MR. HEMANN:** And the clarification, just to play it
21 out, is what we would object to is a follow-up question that
22 said, "Isn't it true that you were fired by the San Francisco
23 Police Department for submitting the 20 false time cards?"

24 **THE COURT:** And that can't be inquired into. That's
25 an adjudication by an administrative body or by a -- yeah, an

1 administrative body, finding that the evidence of dishonesty
2 justified a particular administrative action. It's an
3 adjudication.

4 So unless you have a case which says it can -- because the
5 way I look at it you can't. And the law I've seen says you
6 can't. Whether you think that's fair or not, I mean, I
7 understand. But I don't write the rules of evidence.

8 I understand your feelings in the matter. But feelings
9 aren't going to -- feelings don't run -- you know, the Evidence
10 Code may be a bit like the IRS code. It's sort of a way -- you
11 know, it's a time-tested way of admitting evidence and
12 excluding other evidence.

13 So is there any -- do you have any questions about this?

14 Is it clear, Ms. --

15 **MS. CAFFESE:** May I, Your Honor?

16 **THE COURT:** Ms. Caffese, go right ahead.

17 **MS. CAFFESE:** Judge, I think there are two issues
18 here. I understand the Court's ruling concerning the
19 adjudication and I understand the Court's ruling of the
20 prohibition against extrinsic evidence. I get that.

21 The problem that we have here, though, is Mr. Vargas
22 claims in his direct examination that the misconduct, to
23 paraphrase -- to paraphrase, so to speak, that his life of
24 crime committed when he went to plainclothes and started
25 working with Officer Robles.

1 My concern is that that is misleading to the jury because
2 our argument is that Vargas --

3 **THE COURT:** Well, maybe I can cut through this,
4 because I was -- I was persuaded by your argument. In other
5 words, it was sort of the reverse of a "Come to Jesus" moment.
6 It was sort of a "Come to Satan" moment that, you know, he was
7 fine until he met your client and then, suddenly, he was drawn
8 down the path of sin.

9 And I think that's why I'm saying to you that the time
10 period -- I have no idea what these false time sheets are. Do
11 they pre- --

12 **MS. CAFFESE:** Yes.

13 **THE COURT:** -- they predate --

14 **MS. CAFFESE:** Yes.

15 **THE COURT:** Oh, then you can certainly say, "Isn't it
16 true that you submitted these time requests, which were
17 erroneous" -- in your view false; but in his view erroneous --
18 "even before you met Mr. Robles?" Didn't it occur in 2004,
19 whatever year it did, 2006?

20 Isn't that big report -- doesn't that document --

21 **MS. CAFFESE:** Yes, it does.

22 **MR. HEMANN:** The conclusion that I draw from the
23 report is that lots of officers were doing it starting in --
24 the audit period was '07 to '09. I have to ask Officer Vargas
25 exactly when he did it. I think he'll say he probably did it

1 during that period of time as well, even though he didn't go to
2 court very often.

3 **THE COURT:** Well, anyway, you can certainly establish
4 the time period, okay, which I think in part addresses your
5 concern about his -- when he embarked upon this conduct which
6 you believe to be fraudulent conduct.

7 **MS. CAFFESE:** If I could --

8 **THE COURT:** Go ahead, Ms. Caffese.

9 **MR. HEMANN:** Sorry.

10 **THE COURT:** Yeah.

11 **MS. CAFFESE:** If I can add something -- and I think
12 this needs to be part of the record -- is that Mr. Vargas
13 claims this was a department problem, widespread. But the
14 facts are to the contrary.

15 And in my investigation and my speaking with the P.O.A.,
16 speaking with Mr. Chignell, was that, in fact, none of the
17 other officers had these issues. And that's why I put Hilder
18 on the witness list, because what he is claiming is a lie.

19 He went through a due process hearing where he claimed
20 that -- that was his defense -- everybody else was doing that.
21 And that was proven to be false, that, in fact, other people
22 weren't doing it.

23 He actually was not --

24 **THE COURT:** I don't know. It may be a different
25 situation. I have to try to figure this out. If he starts to

1 say things like everybody was doing it -- wait a minute, I'm
2 just telling you. This is like let me give you a heads-up.

3 **MR. HEMANN:** Right.

4 **THE COURT:** So I take it that if he starts going into
5 it, then it may be a totally different story as to what I allow
6 in in cross and so forth.

7 But if he starts defending it and saying I did it because
8 Jones did it and everybody in the department did it and so
9 forth and so on, that broadens the scope of inquiry. Okay?

10 **MS. CAFFESE:** Fair enough.

11 **THE COURT:** But you can't say, Well, wasn't it your
12 defense that everybody did it? And then he says, Yes. And now
13 you say, Now the door is open. You can't do it that way. It
14 has to come from him.

15 In other words, if he's going to come up and defend the
16 conduct, then he opens the door. If you ask him to defend the
17 conduct, you've opened the door.

18 So you know-- are you not understanding what I'm saying?
19 You look puzzled.

20 **MS. CAFFESE:** I'm --

21 **THE COURT:** It's a question of opening the door. It's
22 who's opening the door. Are you opening it by way of your
23 questions or is he opening it by way of his responses?

24 And that's clear. We do this with witnesses all the time.
25 You should caution the witness. The government should caution

1 the witness about what he's going to say, because if he's going
2 to offer a defense to these on unsolicited -- unsolicited, let
3 me emphasize that -- he opens the door.

4 If it's solicited, the question is: Who solicits it?
5 Does the government or does the defense? And one or the other
6 will be charged with opening the door.

7 And if you open the door -- the defense cannot open the
8 door. The witness could open the door. Or the government can
9 open the door if they want to.

10 **MR. HEMANN:** The government is going to stay very far
11 away from the door, Your Honor.

12 **MS. CAFFESE:** The second point I just want to make is
13 that, aside from the issue of impeachment is the defense theory
14 in this case, is that before Officer Robles became Vargas's
15 partner, Vargas, himself, was participating in his own
16 misconduct which dates back to 2002, which dates back to the
17 incidence with -- with others. And it also postdates his
18 working with Robles.

19 **THE COURT:** Postdates?

20 **MS. CAFFESE:** Right. Because some of this is
21 misconduct that -- and I believe it's going to come out on
22 direct examination -- is that Vargas was acting alone, when
23 Mr. Robles wasn't even present.

24 And I think that the evidence shows, and will show, that
25 just like what he did back in defending himself with the time

1 sheets, is that everybody else was doing that when, in fact, he
2 was doing it on his own. And he blames other people,
3 essentially, to claim leniency for himself.

4 **MR. HEMANN:** If I may, Your Honor, just two points in
5 response to that.

6 Number one, it's not the same conduct. This case is not
7 about Officer Robles submitting false time cards. If it were,
8 then perhaps we would be having this discussion in a more -- in
9 a way more consistent with the -- the position would be more
10 consistent with the rules of evidence.

11 It is not -- hey, we're not taking the position he's an
12 honest person. We're taking the position he's a dishonest
13 person who did dishonest things. And if his testimony here is
14 to be believed, fine.

15 But we're not taking the position that he never did
16 anything wrong before. That goes for the time cards. That
17 goes for the use of force. He should not have punched a guy in
18 the face with a meth pipe. I don't think so. Nobody thinks
19 so. I presume he doesn't even think so at this point.

20 But that doesn't have anything to do with the conduct that
21 started after he became a plainclothes police officer.
22 Obviously, he was predisposed to it because he popped into it
23 right away, which is our theory of the case. So that's number
24 one.

25 Number two, in terms of the door being opened, an attorney

1 retained by the Police Officers Association defended Mr. Vargas
2 at this due process hearing that Mr. Vargas didn't even attend.

3 The P.O.A. took the position, through the attorney it
4 hired and authorized to take the position, that Mr. Vargas
5 should not be fired.

6 So this -- this whole -- if the door gets opened, it gets
7 opened to a holy mess of conflicting interpretation --

8 **THE COURT:** It's not going to be opened.

9 **MR. HEMANN:** So --

10 **THE COURT:** I mean, I'm not going to let it.

11 Look, I have so much control, but other things I don't
12 control. I can't predict. That's why we're having this
13 discussion now, because you guys are very good and you'll
14 follow what the ruling of the Court is.

15 And I hope I've been as clear as I can be. I hope I've
16 been clear. I don't know that I've been as clear as I can be,
17 but I hope I've been clear.

18 And, you know, I was sympathetic to Ms. Caffese's argument
19 about the timing because I think that is of some significance
20 because it puts her client in a particularly unfavorable light
21 to suggest that he was the one who, quote, corrupted Officer
22 Vargas. And that makes it -- that makes it -- that makes it
23 appear that Mr. Robles is more culpable.

24 On the other hand, I would be surprised, given everything
25 I'm learning about the case, that the government would argue it

1 that way. It doesn't seem that they would. Obviously, they'll
2 argue based upon the record. And you have to have a record in
3 order to make an argument.

4 So I think it's fairly clear as it's evolving and I just
5 wanted to give guidance to the parties.

6 (Government and defense counsel confer off the record.)

7 **THE COURT:** Do you want to take a break?

8 **MR. HEMANN:** There's one other incident, that
9 Ms. Caffese told us this morning, that she's intending to
10 cross-examine Mr. Vargas about. I read it very briefly.

11 It's a 2002 argument with another -- probably the easiest
12 thing to do is just hand it up to the Court. It's a dispute
13 between two -- another -- between Mr. Vargas and another police
14 officer during the course of what looks like an arrest of
15 somebody else.

16 They get into an argument. Mr. Vargas threatens --
17 according to the police officer, threatens the other police
18 officer. I would hand it up to the Court. There's a paragraph
19 in the middle that starts, Vargas asked, quote, where do you
20 live bitch, unquote. And it goes on from there.

21 We don't think that that is appropriate cross-examination.

22 (Handing document to the Court.)

23 (Pause)

24 **THE COURT:** Well, I don't know how it goes to honesty.

25 **MS. CAFFESE:** Well --

1 **THE COURT:** How does it go to honesty?

2 **MS. CAFFESE:** This is what I would argue, Judge, is,
3 once again --

4 **THE COURT:** Go ahead. I'm going to mark it as an
5 exhibit so the record is there.

6 (Trial Exhibit 350 marked for identification.)

7 **MS. CAFFESE:** Thank you.

8 Mr. Vargas, once again, claims his misconduct occurred
9 when he began working for Robles.

10 **THE COURT:** I don't think he's saying that. I mean,
11 that's not going to be the evidence, is it? He's not going to
12 ask the question, look, until you met Mr. Robles, did you ever
13 do anything dishonest? He's not going to ask that question.

14 He said how he took money. I think that's what the
15 evidence is, that he took money from a scene when he became a
16 plainclothesman. And I think he said that he -- I think his
17 testimony was he was given the money at the scene by
18 Mr. Robles.

19 But I don't think -- he's not taking the position that
20 until then he was honest. And my guess is -- we can revisit
21 this before you start your cross, but looking at it now, it
22 doesn't appear to be an act of dishonesty.

23 **MS. CAFFESE:** That's what I would ask, Your Honor.

24 **THE COURT:** Okay. All right. Let's take five minutes
25 and then we'll start.

1 **MR. HEMANN:** Thank you, Your Honor.

2 **MS. CAFFESE:** Thank you.

3 (Recess taken from 8:54 to 9:03 a.m.)

4 **THE COURT:** Please be seated.

5 Let the record reflect all jurors are present. The
6 parties are present.

7 You may continue.

8 **MR. HEMANN:** Thank you very much, Your Honor.

9 **REYNALDO VARGAS, PLAINTIFF WITNESS, PREVIOUSLY SWORN**

10 **DIRECT EXAMINATION (RESUMED)**

11 **BY MR. HEMANN:**

12 **Q.** Mr. Vargas, yesterday we were discussing the Apple gift
13 cards. Do you remember that?

14 **A.** Yes.

15 **Q.** Okay. I'd like to finish up that discussion before we
16 move on.

17 You testified that you made a call to check the balance
18 from the -- from the Marilyn Hotel; is that correct?

19 **A.** Yes.

20 **Q.** And who was present when you made the call to check the
21 balance on that card?

22 **A.** At that particular moment I may have been alone or it
23 would have been Mr. Robles. I don't recall Mr. Furminger being
24 there that exact moment when I was checking the balance on the
25 cards.

1 Q. After you checked the balance and you cleared the scene,
2 you said you went back to the Mission Station with Kelsey?

3 A. Yes.

4 Q. At some point during the day at Mission Station, did you
5 discuss the gift card with Mr. Robles and/or Mr. Furminger?

6 A. Yes.

7 Q. And which or both of the two?

8 A. Just with Mr. Robles, not with Mr. Furminger.

9 Q. And when you discussed it with Mr. Robles, what did the
10 two of you discuss?

11 A. I told him that I had found the card at Mr. Furlong's
12 residence and that it had a large balance on it and I,
13 basically, suggested we go shopping.

14 Q. And did Mr. Robles -- did he appreciate at that moment,
15 when you first told him, the significance of the fact that you
16 had grabbed this gift card?

17 MS. CAFFESE: Objection. Calls for speculation.

18 THE COURT: I'm sorry.

19 Well, sustained.

20 MR. HEMANN: I can ask a different question.

21 BY MR. HEMANN:

22 Q. Did Mr. Robles say any -- when you first told him that you
23 had grabbed the gift cards, did he express anything to you
24 regarding his understanding of what the usefulness of the gift
25 card was?

1 **A.** I don't think he appreciated --

2 **Q.** Well, the question I'm asking is: What did he express to
3 you? And then we can talk about what you -- how you
4 interpreted it.

5 **A.** Surprise.

6 **Q.** And what did he -- what was the substance of what he said
7 that led you to say "surprise"? He didn't say "surprise,"
8 right?

9 **A.** No.

10 **Q.** Okay. What did he say?

11 **A.** He was surprised at the value, that there was, in fact, so
12 much money on the cards. And then -- you know, to then use it
13 to then buy something.

14 And so I don't think he appreciated their value the way I
15 did. I was the person that picked up the card and took the
16 time to then see if there was a balance on it. And so I think
17 that he kind of would have glossed over that where I did not.

18 **Q.** At some point in time did Kelsey -- and I'm not using her
19 first name out of disrespect. You just don't remember her
20 first name; correct?

21 **A.** Her last name.

22 **Q.** Her last name, sorry.

23 Did Kelsey make a phone call that day from Mission
24 Station?

25 **A.** I believe so, yes.

1 Q. Do you have a recollection as to where she called?

2 A. I believe she had a part-time job, and so she was trying
3 to call her job.

4 Q. After she made that phone call, you said you released her?

5 A. Yes.

6 Q. And you and Mr. Robles went to the Apple gift store?

7 A. Yes.

8 Q. Did you and Mr. Robles put in for overtime that day?

9 MS. CAFFESE: Well, excuse me. That calls for
10 speculation as to Mr. Robles.

11 THE COURT: Sustained.

12 BY MR. HEMANN:

13 Q. Did you put in for overtime that day?

14 A. I don't recall if I did. I could have, but I just don't
15 recall.

16 Q. And did Mr. Robles, to your knowledge, put in for overtime
17 that day?

18 A. Again, I don't recall.

19 Q. At some point in time did you speak with Mr. Furminger
20 about the Apple gift card purchases?

21 A. Yes.

22 Q. When was that?

23 A. That was, I believe, a couple of days later.

24 Q. And what was the -- was it in person or on the telephone?

25 A. It was in person.

1 Q. And was Mr. Robles present during that conversation?

2 A. Yes.

3 Q. And what did you discuss?

4 A. Mr. Furminger was a little upset with us and used some
5 colorful language.

6 Q. And how did he express his upsetness, his being upset?

7 A. Can I --

8 Q. You don't need to quote it, but how did he express it,
9 without necessarily quoting it?

10 A. He was upset that we had gone to the Apple store and
11 purchased things without him.

12 Q. Do you know how he found out that you had gone to the
13 Apple store?

14 A. I know that I didn't tell him, so I made the assumption
15 that Mr. Robles told him.

16 Q. And what was the substance of what Mr. Furminger said?

17 A. I'll subtract the colorful language, but basically, hey,
18 thanks for going there without me and cutting me out of that.
19 Not getting his portion.

20 Q. Was he upset with you for the impropriety of making the
21 purchase?

22 A. He was upset because he was not included in the purchase.

23 Q. You mentioned yesterday that you had received a tip for
24 Mr. Furlong, Zeppi Furlong, from Daisy Bram and Jayme, her
25 partner?

1 **A.** Yes.

2 **Q.** After you made the arrest of Mr. Furlong and conducted the
3 search at the Marilyn Hotel and used the gift card, did you
4 come again into contact with Mr. -- with Jayme and Daisy?

5 **A.** Yes.

6 **Q.** And how did that come about?

7 **A.** We had many contacts with them subsequent to that Furlong
8 arrest.

9 **Q.** When you say "we," who are you talking about?

10 **A.** Myself, Mr. Robles, and Mr. Furminger.

11 **Q.** And what was the context of the contact that you had
12 with -- with Daisy and Jayme?

13 **A.** Well, in terms of, you know, trying to cultivate someone
14 as an informant, they -- their first initial case was really
15 good, really successful. And so our first thoughts were, wow,
16 this could be a great relationship. If they had additional
17 information and additional targets of that level, it could be
18 great.

19 And so we continued to try and cultivate that relationship
20 and just talk to them, get to know them, because we had never
21 met them before at all and so we both had to kind of get a
22 comfort level with each other; us and them, them and us.

23 **Q.** So how did you go about -- what kinds of things did you do
24 to cultivate the relationship?

25 **A.** We would talk about -- about drug-related topics. We

1 would talk about personal topics. We found out about, you
2 know, some of their history, where they had come from. We knew
3 their criminal history, and so we kind of delved a little bit
4 into that, kind of get the back story behind that stuff.
5 Bought them food several times. So, you know, kind of
6 conversed over food, that sort of thing.

7 **Q.** Where did you meet with them?

8 **A.** At the -- at Mission Station.

9 **Q.** Why is it that you and Mr. Robles and Mr. Furminger were
10 doing this together, if you will?

11 **A.** As I had mentioned yesterday, probably at this point in
12 mid to late February and beginning into early March my schedule
13 had lined up completely with Mr. Robles, so he and I were
14 partners. So we would be working every day together.

15 And often during these times Mr. Furminger would schedule
16 himself with us as well. And so the three of us would be
17 riding together.

18 **Q.** When you talked about cultivating them as -- as
19 confidential informants, both of them or just one of them was
20 your intent?

21 **A.** Ultimately, only one was really viable as an informant.

22 **Q.** Which one?

23 **A.** Daisy.

24 **Q.** And why was Jayme not a rely -- a potentially reliable
25 informant?

1 **A.** His criminal history and, in particular, violence kind of
2 precluded him from ever being accepted as an informant. We
3 have to put together a packet and then turn that in. And that
4 packet is then reviewed and has to be either approved or
5 denied. And we just never thought that with his criminal
6 history he would ever be approved.

7 **Q.** Now, at some point in time did -- did Daisy fall ill?

8 **A.** Yes.

9 **Q.** And what were the circumstances regarding her falling ill?

10 **A.** It was really soon after the Furlong arrest. And as they
11 told me --

12 **MS. CAFFESE:** Excuse me. That calls for -- he's
13 testifying to hearsay. Objection.

14 **MR. HEMANN:** Not offered for the truth, Your Honor.

15 **THE COURT:** Well, my concern was "they." Who is
16 "they"?

17 **BY MR. HEMANN:**

18 **Q.** Could you be more specific?

19 **A.** Yes.

20 **Q.** Go --

21 **THE COURT:** Who said what?

22 **BY MR. HEMANN:**

23 **Q.** Who said what? Yes.

24 **A.** Jayme and Daisy told me that Daisy had stabbed herself
25 with a dirty needle, and her hand had started to become

1 infected.

2 We learned about it really quick as it was getting --
3 starting to get very bad. It subsequently got so bad she had
4 to be hospitalized and nearly lost her hand because her hand
5 exploded in size.

6 **Q.** And did you view this yourself?

7 **A.** Yes. At one point Mr. Robles, Mr. Furminger, and myself,
8 we actually went over to visit them in the hospital and brought
9 them coffee and bagels.

10 **Q.** And just the way you answered that made me think -- try as
11 much as you can as you're answering questions, instead of
12 saying "we," even though it sounds awkward, identify who the
13 "we" is when you do it. If you don't, I'll try to remind you,
14 okay.

15 So the three of you went to the hospital, visited. You
16 spoke with her?

17 **A.** Yes.

18 **Q.** Okay. So I want to leave Daisy and Jayme for a moment and
19 ask you whether at some point in time you recall some marijuana
20 being seized by or identified by UPS in San Francisco?

21 **A.** Yes.

22 **Q.** And what -- what do you remember about -- about that?

23 **A.** There's a UPS distribution center that's located within
24 the Mission District. And, oftentimes, the UPS employees,
25 themselves, would catch suspicious packages and then locate

1 narcotics that were attempting to be shipped through UPS.

2 Q. And did that happen one day in March of 2009?

3 A. Yes.

4 Q. And did you and Mr. Furminger and Mr. Robles do something
5 with regard to that report made by UPS?

6 A. Yes.

7 Q. What did you do?

8 A. UPS would call a police dispatch number and then request
9 that officers come and retrieve that and book -- you know,
10 seize those narcotics.

11 Q. And did the three of you go do that?

12 A. Yes.

13 Q. Together?

14 A. Uhm, yes.

15 Q. After you retrieved it, what did you -- and by that I mean
16 the three of you -- do with the marijuana?

17 Immediately thereafter, what did you do with the
18 marijuana?

19 A. Took it back to Mission Station.

20 Q. When you got back to Mission Station, did you do something
21 further with the marijuana?

22 A. Yes.

23 Q. And when that happened, who was present?

24 A. Myself, Mr. Robles, and Mr. Furminger.

25 Q. And what did you do with the marijuana?

1 A. We --

2 Q. First of all, what did it physically -- when you -- when
3 you brought something back to Mission Station, what did it look
4 like?

5 A. There were two large boxes. I shouldn't say "large." Two
6 boxes.

7 Q. Okay. Just indicate to the jury sort of how big they --

8 A. Uhm -- (indicating).

9 Q. Foot and a half, two feet across?

10 A. Yeah, maybe this in length and this in height
11 (indicating). And the depth was maybe about this deep
12 (indicating).

13 Q. Okay. So 2-by-6 inches by a foot, something like that?

14 A. Yes.

15 Q. Okay.

16 A. And as I recall, two boxes of equal size.

17 Q. And what did you do with those two boxes?

18 A. The boxes had been opened by UPS, and so the contents were
19 easily visible.

20 Q. What did you do with the contents then?

21 You have two boxes, they're both opened, what do you do?

22 A. We pull the contents out and they were vacuum-sealed
23 marijuana -- or suspected marijuana I guess you would say.

24 Q. So you got how many pounds, roughly, do you think, if you
25 recall?

1 **A.** At least three pounds, maybe four pounds. Three or four
2 pounds.

3 **Q.** Okay. Did you divide it up somehow?

4 **A.** Yes. Well, it was already divided into pounds.

5 **Q.** Okay. How many equal -- were they roughly equal?

6 **A.** Yes, I believe so.

7 **Q.** How many were they -- were there?

8 **A.** Either three or four.

9 **Q.** Okay. What did you do with those three or four roughly
10 equal bags?

11 **A.** One of the bags we actually contacted a police
12 jurisdiction at the destination that initially it was intended
13 to be sent to. I believe that was in either Indiana or
14 Illinois, something like that. And we contacted an officer out
15 there and devised a plan to let a pound go through so that
16 maybe they could investigate it on their side.

17 We attempted to investigate if the person who had shipped
18 the marijuana with all the information that we had available
19 from UPS and also from the -- from the shipping form itself.

20 **Q.** Okay. And did, in fact, you go ahead and send a portion
21 of the marijuana on through to its destination?

22 **A.** Yes.

23 **Q.** And were you in contact with the police at that
24 destination to alert them that this marijuana was coming
25 through?

1 **A.** Yes.

2 **Q.** Okay. What did you do with the remaining marijuana?

3 **A.** One of the bags I booked into evidence. And this is kind
4 of subsequent to attempting to investigate the shipper and
5 basically coming up with a dead end there. Not being able to
6 really develop any kind of credible information to go forward
7 in that investigation, it kind of came to a dead end.

8 And then I booked that evidence for SFPD, I believe, for
9 destruction.

10 **Q.** And tell the jury sort of how you would do that.

11 When you say book the evidence for SFPD, how would you do
12 that?

13 **A.** In this particular case the bag was really large. It was
14 a pretty large bag. And in our police department we have a
15 specific-sized manila envelope, basically 8-and-a-half-by-11,
16 that we use to book narcotics.

17 The bag of marijuana was much larger, too large to fit
18 inside that bag. So what I did was I cut it out of its
19 original packaging, transferred into smaller bags, and then
20 used those smaller bags to put into our standard narcotics
21 envelope, and then book those envelopes into our narcotics drop
22 at 850 Bryant.

23 **MR. HEMANN:** Your Honor, may I show the witness what's
24 been marked as Exhibit 244, 107, 108, 109, and 110?

25 **THE COURT:** Are they in evidence?

1 **MR. HEMANN:** Not yet.

2 **THE COURT:** Okay. Give me the numbers again.

3 **MR. HEMANN:** 244.

4 **THE COURT:** 244.

5 **MR. HEMANN:** 107.

6 **THE COURT:** 107.

7 **MR. HEMANN:** 108.

8 **THE COURT:** 108.

9 **MR. HEMANN:** 109.

10 **THE COURT:** 109.

11 **MR. HEMANN:** And 110.

12 **THE COURT:** 110. Yes, go ahead.

13 (Trial Exhibits 107, 108, 109, 110, 244 marked for
14 identification.)

15 **BY MR. HEMANN:**

16 **Q.** I'm handing you a large bag, Mr. Robles, that has some
17 smaller bags in it. Could you just take a quick look at those
18 smaller bags, each of which is separately numbered with the
19 five numbers that I just indicated to you.

20 **A.** (Witness complies.)

21 **Q.** Have you had a chance to look at those, Mr. Vargas?

22 **A.** Yes.

23 **Q.** Are those the bags of marijuana that you -- that you
24 booked into evidence with the San Francisco Police Department?

25 **A.** Yes.

1 Q. And they have a smell to them; correct?

2 A. Yeah, absolutely.

3 Q. Did they smell the same or less strong or more strong at
4 the time that you seized it?

5 A. I imagine, just due to time, they smelled much stronger
6 then.

7 Q. Did you -- you took those. Where did you do this dividing
8 up that you just described?

9 A. At Mission Station, inside the plainclothes office.

10 MR. HEMANN: Agent Flores, can you help me with this?

11 Can we have one moment, Your Honor? We're going to put it
12 back where it belongs.

13 THE COURT: Yeah.

14 So 244, 107, 108, 109, 110 admitted into evidence.

15 (Trial Exhibits 107, 108, 109, 110, and 244 received in
16 evidence.)

17 MR. HEMANN: Thank you, Your Honor.

18 BY MR. HEMANN:

19 Q. So, Officer -- or Mr. Vargas, was that all of the
20 remaining marijuana?

21 So you sent a portion to another state. You booked a
22 portion that we just looked at into evidence. Was there
23 another portion?

24 A. Yes.

25 Q. What did you do with that portion?

1 **A.** Initially, that portion we kept intact -- I kept intact
2 with the -- in its original packaging. And inside our office,
3 there was a file cabinet, and I believe I put that inside the
4 file cabinet.

5 **MR. GETZ:** I would ask for clarification on the "we"
6 as part of that answer.

7 **MR. HEMANN:** Oh, certainly.

8 **BY MR. HEMANN:**

9 **Q.** When you did this, when you segregated a portion while you
10 were in your office and put it into the file cabinet, who was
11 present?

12 **A.** Uhm, I believe I clarified myself. I was present. I did
13 it.

14 **Q.** Okay.

15 **A.** That's what I'm saying.

16 **Q.** Was anybody else present when you put that portion into
17 the file cabinet at the office?

18 **A.** When I put it in the file cabinet, I don't believe so, no.

19 **Q.** And you said that initially you were dividing up the
20 portion to go to the other state, the portion to be booked into
21 evidence, and the portion that went in the file cabinet.

22 Were all three of you there at that point in time when you
23 initially started dividing it up?

24 **A.** Portions of that time, yes, absolutely, all three were,
25 because we -- the three of us being myself, Mr. Robles, and

1 Mr. Furminger, because it was the three of us that came to the
2 decision to allow a portion of it to actually continue on to
3 its intended destination.

4 **Q.** So by the time you got to that last bit, did -- had
5 Mr. Robles and Mr. Furminger left the office, that last
6 portion?

7 **A.** I believe so, because my recollection is that ultimately
8 when it -- when booking those -- those last five bags there
9 that got booked into evidence, I believe I did that alone.

10 **MR. HEMANN:** May I ask -- Barbara, do you have the
11 exhibits that are in evidence? Are they up here with you?

12 **THE CLERK:** Yes.

13 **MR. HEMANN:** Can I have Exhibit 114, please.

14 Thank you.

15 **BY MR. HEMANN:**

16 **Q.** Mr. Vargas, this is Exhibit 114, which is in evidence.

17 The portion of the marijuana that you put into the file
18 cabinet, as to that, does that bag that I just handed you look
19 familiar?

20 **A.** Yes. This could easily be the same bag.

21 **Q.** And so you put a portion of the marijuana in the file
22 cabinet. And after you did that, did you discuss the marijuana
23 that was in the file cabinet with either Mr. Robles or
24 Mr. Furminger?

25 And I say "did you discuss?" Did you discuss, shortly

1 afterwards, with either of the two of them, that there was some
2 marijuana in the file cabinet at Mission Station?

3 **A.** We did discuss it. But we discussed it with other people
4 as well. And those other people being Daisy and Jayme.

5 **Q.** When you say "we," who discussed it with Daisy --

6 **A.** Myself, Mr. Robles, Mr. Furminger, Daisy and Jayme, the
7 kids.

8 **Q.** And what did you discuss?

9 **A.** We asked them about the marijuana.

10 Daisy had a lot of familiarity with marijuana, probably
11 more than I did and maybe more -- I can't say what the other
12 guys -- what Mr. Furminger and Mr. Robles knew. But she had a
13 lot of expertise, and so we were asking her about it. Its
14 worth; its quality; values; what would street prices be. That
15 sort of thing. And she had a lot of knowledge in that.

16 **Q.** When you took that portion of marijuana that we just
17 looked at -- I'm sorry, when you took the portion of marijuana
18 that was in that bag that you just looked at and put it in the
19 file cabinet, what was your plan for -- what were you going to
20 do with it? Why didn't you book it into evidence?

21 **A.** I don't know.

22 **Q.** Then why did you do it?

23 **A.** I don't know.

24 **Q.** No idea at all, as you sit here today, why you took a
25 pound of marijuana and put it into a file cabinet at Mission

1 Station?

2 **A.** I don't.

3 **Q.** Were you planning, at that point in time, to sell it?

4 **A.** I was not planning, at that time, to sell it, no.

5 **Q.** What were you planning on doing with it?

6 **A.** I don't know. I -- I looked at it.

7 I've asked myself this question many times. I had gone
8 through the investigation of attempting to locate the shipper.
9 That had come to a dead end.

10 We had let a portion of the package go through its
11 destination. I don't believe there was any arrest or anything
12 on that end.

13 The portion that I booked, I booked in for destruction.
14 So, ultimately, all that was going to happen with it was going
15 to be destroyed.

16 And so here was this large portion of -- of marijuana, a
17 commodity of sorts. So I was like, wow, what a waste to just
18 destroy it. But I don't know that I had any sort of further
19 plan, at that moment, initially, when I put it in the file
20 cabinet.

21 **Q.** At some point in time did you discuss that there's a
22 quarter -- or a pound of marijuana sitting in the file cabinet,
23 with either Mr. Robles or Mr. Furminger?

24 **A.** Yes, because we would take it out and look at it. So we
25 both -- all of us being myself, Mr. Robles, and Mr. Furminger

1 knew that there was a pound of marijuana sitting in that file
2 cabinet.

3 Q. Now, at this point in time had you met Cesar Hernandez?
4 This is, sort of, the end of March of '09?

5 A. Yes.

6 Q. And did you discuss that marijuana with Cesar Hernandez?

7 A. I don't recall discussing it with him, no.

8 Q. Do you remember anybody discussing it with Mr. Hernandez
9 in your presence?

10 A. I don't recall it, no.

11 Q. So at some point in time did you make a decision as to
12 what to do with that marijuana?

13 A. Yes.

14 Q. What was the decision that you made?

15 A. I decided to give it to who I call "the kids," Daisy and
16 Jayme.

17 They had just come out of the hospital with her injury and
18 were even kind of in worse shape than when we had met them.

19 Q. And why did you want to give it to them? Why did you
20 decide to give it to them?

21 A. As, uhm -- as wrong as this sounds, it was kind of an
22 altruistic gesture. I wanted to give them something to --
23 something they could use to make some money for themselves.

24 They were very down on their luck. My intent with it was
25 ultimately it was just going to be destroyed. I thought that

1 was kind of a waste. At least if they had it they could do
2 something with it.

3 They could obviously sell it -- that was her expertise --
4 and make some money for themselves to get themselves off the
5 street into a hotel room, eat. That sort of thing.

6 **Q.** So your intention -- not to put too fine a point on it --
7 was to give heroin addicts marijuana to sell on the street?

8 **A.** Yes.

9 **Q.** So that they would have money?

10 **A.** Yes.

11 **Q.** Did you -- did it go through your head, at the time, that
12 this is an illegal thing to do?

13 **A.** Absolutely.

14 **Q.** Did you discuss this plan with either Mr. Robles or
15 Mr. Furminger?

16 **A.** In advance, no.

17 **Q.** At some point in time did you discuss giving the marijuana
18 to Daisy and Jayme, with either Mr. Robles or Mr. Furminger?

19 **A.** Yes.

20 **Q.** What were the -- first of all, which one or both?

21 **A.** Uhm, I never discussed it with Mr. Furminger until after I
22 had already done it.

23 But Mr. Robles was there with me when I gave them the
24 marijuana. And so I said -- I grabbed the bag of weed from the
25 file cabinet, and I put it in a paper bag, and I said, "Hey,

1 I'm going to give this to the kids."

2 And this is in our office. So then he walked with me out
3 to the front of the office, just outside the station. They
4 were, in fact, leaving. So we kind of hustled out to catch
5 them as they were walking away. And I motioned them back to me
6 and handed them the bag, the paper bag that contained the
7 marijuana.

8 Q. So they had been in the station speaking with whom?

9 A. Uhm, with -- at that point, myself and Mr. Robles.

10 Q. And it was after they -- as they were leaving, did you
11 hatch this idea of giving it to them?

12 A. Just a spur-of-the-moment thing. And I just acted on it,
13 yes.

14 Q. In the immediate aftermath of that -- so after you hand it
15 to them -- did you have a discussion about what you had just
16 done, with Mr. Robles?

17 A. I don't really recall us discussing it too much further.

18 Q. At some point in time did Daisy, Jayme, and that marijuana
19 reappear in your life?

20 A. Yes.

21 Q. How shortly after?

22 A. Pretty quickly. I don't recall exactly how many days, but
23 very soon afterwards.

24 Q. What happened?

25 A. I found out after the second incident, but I believe in

1 two successive days they were stopped and detained by police
2 either using marijuana or attempting to sell marijuana out in
3 Golden Gate Park.

4 **Q.** And what happened to them?

5 **A.** Uhm, I don't believe anything happened to them the first
6 incident. But the very next day Daisy was arrested.

7 **Q.** And so two incidents -- the first one Jayme, the second
8 one Daisy -- you were informed?

9 **A.** Yes.

10 **Q.** And then what happened after Daisy got arrested?

11 **A.** She was booked.

12 **Q.** And were there communications then between Daisy and you
13 about the fact that she had been booked?

14 **A.** Yes.

15 **Q.** And what were the nature of those communications?

16 **A.** She called me from jail, very upset, yelling at me on the
17 phone and just upset in general.

18 **Q.** Upset about what?

19 **A.** Upset about being arrested. Basically, that -- that we
20 couldn't help her out of the arrest.

21 **Q.** At the point after you found out that the two of them had
22 been arrested selling this marijuana, did you discuss what you
23 had done with either Mr. Robles or Mr. Furminger?

24 **A.** At that point, Mr. Furminger was already -- was aware of
25 it, where the marijuana had come from, that it had come from me

1 giving it to them.

2 And so I definitely recall myself and Mr. Robles deciding
3 that we got -- we have to get this marijuana back from them.

4 **Q.** Back from whom?

5 **A.** From Jayme and Daisy.

6 **Q.** What -- did you then, once you decided to do it, did you
7 do it?

8 **A.** Yes.

9 **Q.** How did you do it?

10 **A.** They were staying at an SRO hotel on Market Street. And
11 we knew where they were staying, and we went to their hotel and
12 told them to give us back the weed. And they did.

13 **Q.** How did you get there?

14 **A.** We drove there.

15 **Q.** In your police car?

16 **A.** Yeah. We were still in a plainclothes capacity, driving
17 an unmarked police car. So the unmarked police car.

18 **Q.** Who went?

19 **A.** Myself and Mr. Robles.

20 **Q.** Did you retrieve the remaining marijuana from Daisy and
21 Jayme?

22 **A.** Yes.

23 **Q.** And where was it?

24 **A.** They had hidden it -- I guess the SRO had a drop ceiling.
25 So it was above one of the ceiling panels. So they had to

1 remove, like, a ceiling panel. And it was kind of hidden --
2 hidden up in that area. I think, in their bathroom.

3 Q. Did you and Mr. Robles take, then, the marijuana with you
4 and get back in the car?

5 A. Yes.

6 Q. What became of the remaining marijuana?

7 A. I actually don't recall.

8 Q. You don't have any recollection at all?

9 A. I'm -- I'm assuming we just dumped it or threw it away, or
10 something like that. I just don't remember what happened with
11 it at that point.

12 Q. Did you sell it or give it to anybody else?

13 A. No.

14 Q. At some point in time did you then -- after you had taken
15 back the marijuana, did you stay in contact with Daisy and
16 Jayme?

17 A. After her arrest, it got really adversarial between Jayme
18 and Daisy and myself and Mr. Robles and Mr. Furminger. And we
19 were really pissed off at them. They were pissed off at us.
20 And so we really didn't have much -- any contact, I believe,
21 until a few months later. Later on, I think in June or July, I
22 had contact with them.

23 Q. And what was the nature of that contact?

24 A. Jayme and Daisy called me to extort money.

25 Q. And explain to the jury what you mean when you say they

1 called you to "extort money."

2 **A.** What they did was they called me. And Daisy threatened to
3 allege that I had raped her, with the intent to get me in jail.
4 And then Jayme said he would get himself arrested so he could
5 be in jail at the same time.

6 And he claimed membership in an Arian prison gang, and
7 said that him and his White Supremacist prison gang members
8 would be there waiting for me, where they would subsequently
9 rape and kill me in jail.

10 **Q.** Did this communication happen in person or --

11 **A.** Via telephone.

12 **Q.** During that telephone conversation, did you reach out to
13 either Mr. Robles or Mr. Furminger?

14 **A.** Yes.

15 **Q.** Which one?

16 **A.** I called Mr. Furminger.

17 **Q.** Why did you do that?

18 **A.** He always had a very good rapport with Daisy and Jayme.
19 He was also my direct supervisor. And I was, frankly, really,
20 really scared.

21 I've never gotten a call like that. I had been, at that
22 point, a police officer for probably 10, 11 years. And nothing
23 like that had ever happened to me before. And so I was really
24 scared. And so he was the first person I thought to call.

25 **Q.** And did it occur to you that you had also committed a

1 crime?

2 **A.** Absolutely.

3 **Q.** You called him. And what did you do when you called him?
4 How did you call him? I thought you were talking to them on
5 the phone.

6 **A.** Yes, they called my cell phone. I had given them my
7 personal cell phone number. So they called me directly.

8 At that point in time I also had a landline, I believe.
9 So what I did was basically held the two handsets together and,
10 you know, said, hey, well -- you know, and they started talking
11 to each other, telephone to telephone, basically holding the
12 two together.

13 **Q.** And how -- did that conversation resolve -- resolve
14 anything as between the two sides?

15 **A.** Not at all. There was a lot of yelling and screaming back
16 and forth. They were very apologetic to Ian -- excuse me, to
17 Mr. Furminger.

18 And, basically, they said they felt really bad because he
19 was a good white man. But they -- I'll skip the colorful
20 language, but they didn't care anything about the two Mexicans,
21 meaning myself and Mr. Robles. And if the white man had to go
22 down with those two Mexicans that was fine, but they wanted
23 \$10,000 or else they were going to ruin my life and everyone
24 else's life.

25 **Q.** At some point in time did they take further action to

1 again take some action against you?

2 **A.** Yes. Well, they -- they had given me a certain deadline
3 to ship them \$10,000. And I got a few -- few more voice mail
4 calls from them.

5 But after that deadline passed I didn't have, really, any
6 contact with them except later on receiving an OCC complaint,
7 an office of -- I can't remember what OCC stands for now. A
8 citizen complaint from them. They had lodged a complaint
9 against us.

10 **Q.** What is the OCC?

11 **A.** I can't remember. I'm missing one of the Cs. Might be
12 Office of Citizen Complaints.

13 Basically, it's an organization that handles complaints
14 against police officers, that's not directly affiliated by --
15 with the police department and so to, kind of, give them some
16 separation and impartiality.

17 **Q.** And do they have investigators, the OCC have
18 investigators?

19 **A.** Yes.

20 **Q.** Did the OCC start investigation of -- related to the Daisy
21 and Jayme marijuana deal?

22 **A.** Yes.

23 **Q.** At some point in time were you interviewed -- were you
24 notified that you would be interviewed by the OCC about the
25 Daisy-Jayme marijuana deal?

1 A. Yes.

2 Q. Did you discuss that interview with Mr. Robles, that
3 anticipated interview with Mr. Robles and Mr. Furminger?

4 A. Yes.

5 Q. Did you learn that -- during that discussion, whether they
6 would be interviewed by the OCC?

7 A. Yes.

8 Q. Did you discuss with the two of them, together or
9 separately -- and you'll tell us -- what you would say -- what
10 the three of you would say to the OCC investigators?

11 A. Yes.

12 Q. Could you describe the discussion that you had with the
13 two of them? Or was it with both of them at the same time, or
14 separately?

15 A. It was with both of them at the same time.

16 Q. Could you describe that discussion with the jury?

17 A. Yes.

18 The way we described it was we didn't describe what had
19 happened. We basically came up with a theory that we believed
20 would be plausible to explain it.

21 So instead of saying we gave them the marijuana, we
22 discussed, Wow, I wonder how they could have gotten that
23 marijuana? Maybe it was that time -- these times that we left
24 them alone in our office. Maybe then they could have taken it.

25 And in discussing that, the hypothetical instance, we kind

1 of all agreed like, yeah, that must have been when they -- they
2 took the marijuana from us, you know, unbeknownst to us.

3 And in that manner we kind of came to an agreement of how
4 we would handle the interview and the specific questions.

5 **Q.** At some point in time after you had that discussion with
6 Mr. Robles, Mr. Furminger, were you, in fact, interviewed by
7 the OCC?

8 **A.** Yes.

9 **Q.** Did you tell the OCC the truth about how Daisy and Jayme
10 got the marijuana?

11 **A.** No.

12 **Q.** Why not?

13 **A.** Uhm, because to tell the truth would have been admitting
14 that I committed the crime.

15 **Q.** Was that the first time, Mr. Vargas, that you had lied to
16 an OCC investigator?

17 **A.** No.

18 **Q.** When was -- was there multiple prior occasions or one
19 prior occasion?

20 **A.** One -- one occasion that stands out in my mind.

21 **Q.** And when was that?

22 **A.** I believe that was in 2002.

23 **Q.** And did that occasion involve an investigation that was
24 being conducted by the OCC?

25 **A.** Yes.

1 Q. And did that occasion involve an investigation into an
2 arrest and an allegation against you of the excessive use of
3 force?

4 A. Yes.

5 Q. That was in 2000 and --

6 A. -- '2, I believe.

7 Q. I want to ask you some questions about you admitted
8 yesterday that you, over time, beginning in early 2002, engaged
9 in some criminal activity with regard to thefts. Do you
10 remember that? Theft of property.

11 A. Yes.

12 Q. I want to just, sort of, talk about the general way those
13 thefts took place. The *modus operandi*, if you will, of those
14 thefts. And I'd like you to, sort of, describe in your own
15 words what -- how they worked.

16 What was it that you were doing, in terms of thefts, that
17 was illegal?

18 A. Typically, how it would occur is that we would either have
19 information that would point us to a target, or develop
20 information ourselves regarding some sort of person that was
21 trafficking in narcotics.

22 We obviously couldn't deal with the users themselves
23 because those were only user quantities. They didn't really
24 have anything beyond that.

25 And so once we would develop a target we would, kind of,

1 try to generate some probable cause to locate this person in
2 the room, in their residence, that sort of thing.

3 And how the thefts occurred would be subsequent to an
4 arrest and a search. And if narcotics were located then the
5 narcotics would be booked. If cash was located, uhm, portions
6 of the cash we would take; or sometimes all of the cash; and
7 occasionally, on instances, property as well.

8 **Q.** You used the term "we" on several occasions. And I want
9 to, kind of, drill down on that before we move on.

10 Focusing on the time period 2009 and 2010, did the "we"
11 always include all three of you; Mr. Furminger, Mr. Robles, and
12 you?

13 **A.** Almost always it was with Mr. Robles, and a good portion
14 of the time Mr. Furminger.

15 Mr. Robles and I were scheduled the exact same schedule,
16 the exact same hours and days of work after sometime in
17 February of 2009. And so Mr. Furminger would work with us
18 often. With our exact schedule sometimes he could not.

19 **Q.** At some point in time did the conduct just involve you?

20 **A.** Yes.

21 **Q.** And when was that?

22 **A.** Uhm, Mr. Robles left -- subsequently left Mission Station.
23 And so there were portions of the time where neither of them
24 were there. But I was, so I was taking things myself.

25 **Q.** Were all of these thefts or did these thefts -- let me ask

1 it a different way. Did these thefts have a typical magnitude
2 in terms of the amount of money or property that was taken? Or
3 did they vary?

4 **A.** They varied pretty dramatically. There were a few -- few
5 instances where the amounts, in my opinion, were very large.
6 But, typically, the amounts were very, very small. Sometimes
7 20, \$40, something along those lines.

8 Because we were district plainclothes officers working in
9 the Mission District the people we were coming into contact
10 with and investigating were not big dope dealers. They weren't
11 big drug dealers, so we weren't talking huge amounts of drugs
12 or huge amounts of money. So the amounts were very small.

13 **Q.** Focusing on 2009, when Mr. Furminger was there and before
14 Mr. Robles went to motorcycles, could you provide an estimate
15 of about how many times you were involved with one or both of
16 them -- we'll try to nail down the two of them separately in a
17 moment -- in the theft of property and/or money?

18 **A.** It could easily have been two or three times a week. So,
19 then, multiply that out four times for the month and then, you
20 know, multiply again with the month. So it easily could have
21 been 30, 40, 50 times. I mean, I would just be trying to
22 really estimate.

23 **Q.** And after -- in 2010, when you were working on your own,
24 or not with Mr. Robles and Mr. Furminger, as it continued,
25 about how many more times did you engage in similar conduct on

1 your own?

2 **A.** It diminished a bit. But I still, on occasions, did --
3 did take money, and possibly even property as well. Uhm, I
4 would just be guessing. Once or twice a week. I don't know.
5 Maybe -- sometimes less. Sometimes even more.

6 **Q.** In addition to the thefts of money or property during
7 searches, did you and Mr. Robles and Mr. Furminger also engage
8 in other illegal conduct when you were working together in
9 terms of taking something in particular?

10 **A.** Yes.

11 **Q.** What was that?

12 **A.** Uhm, sounds silly.

13 Uhm, around San Francisco there's an antiquated
14 communication system called Call Boxes. And they're basically
15 hard lines that are wired to different locations where police
16 officers, prior to radios, could walk to this location with a
17 special key, open it up, and have a direct line to the police
18 station, communicate.

19 That system is still there. Basically, in case of an
20 earthquake or some national disaster, the cell towers would all
21 fail, the hard lines would still be available for emergency
22 personnel to communicate.

23 Some of these boxes are a hundred years old. Very old and
24 very ornate. And what we would do is we saw that the City was
25 taking some out. And we thought they were removing them and

1 eliminating them out of the system. And we wanted some as
2 souvenirs, essentially.

3 So what we would do is go out with a Sawzall, an electric
4 saw, and search around and find ornate and very old ones. And
5 a lot of them, the really old ones, had the date of
6 manufacturing stamped right on it. And we would just cut them
7 right off the telephone poles and take them.

8 **Q.** Was there ever a time that the three of you located some
9 small -- either large fireworks or small explosive devices,
10 depending on how you think of them?

11 **A.** Uhm, yes.

12 **Q.** And when was that? Or where was that?

13 **A.** I don't recall being involved in the incident where those
14 were recovered, but it came to my knowledge that subsequent to
15 some search and arrest some M1000s -- which are pretty large;
16 basically a giant firecracker -- were recovered in a search.

17 And we used to drive around and set -- set them off. And
18 they're really, really strong. And so strong, in fact, that if
19 you were to put one on the asphalt it would actually take up
20 some of the asphalt in the explosion.

21 **Q.** And when you say you used to drive around and set them
22 off, what would you do?

23 **A.** Well, myself, Mr. Robles, and Mr. Furminger, you know, we
24 started -- sometimes our shifts, we would start at 6:00 a.m.
25 So we would drive around. And the streets would be very empty

1 then. And we would just light one. You know, open the car
2 door and light one on the street, and take off, away from the
3 thing, and leave the thing burning on the street. And this
4 huge explosion would happen. And we'd go back and see that it
5 had blown a tiny, little hole in the asphalt.

6 **Q.** Did you, in your work at Mission Station, come across a
7 person by the name of Sergio?

8 **A.** Yes.

9 **Q.** And when I say "Sergio," do you know who I'm talking
10 about?

11 **A.** Yes.

12 **Q.** Who am I talking about?

13 **A.** You're talking about the fence, the person that deals with
14 stolen property over at 20th and Mission.

15 **Q.** How did you come across Sergio?

16 **A.** When I first started working in the Mission -- and
17 subsequently, later, when I returned to the Mission -- Sergio
18 was essentially an institution there.

19 I mean, he was there like a statue, every single day,
20 doing -- you know, plying his trade.

21 **Q.** And what was his trade?

22 **A.** His trade was buying property from people off the street
23 and then turning around and selling it.

24 **Q.** And what was the nature of that property?

25 **A.** Uhm, stolen.

1 Q. How do you know that?

2 A. Uhm, based on his sources of property. And they were
3 coming from auto boosters, people breaking into cars, as well
4 as people breaking into houses or constructions sites. And so
5 he was buying all of that sort of property.

6 Q. Did you ever sell anything to Sergio?

7 A. Yes.

8 Q. What did you sell him?

9 A. Uhm, I -- on several occasions, I sold items that I had
10 recovered during searches. So always small things like iPods
11 or something along those lines.

12 I even sold property that I had purchased myself
13 legitimately, that I just didn't want to deal with listing on
14 eBay or Craigslist, and just had him sell it for me.

15 Q. Did you ever discuss Sergio with either Mr. Robles or
16 Mr. Furminger?

17 A. Yes.

18 Q. And what was -- what were the nature of your discussions
19 about Sergio with each of them? And if you could be specific,
20 if they were different, what were the nature of those
21 discussions?

22 A. There was a big incident that occurred in me -- prior to
23 my -- as I said earlier, prior to my plainclothes assignment I
24 was a bicycle beat cop. And so I was often riding up and down
25 on Mission Street. So I knew a lot of these people, especially

1 people like Sergio, who were always there on the street all the
2 time. They would see me riding a bicycle.

3 The incident was a -- an individual who was involved with
4 a very large movie production had some -- had, basically, a
5 copy of the movie on a laptop. And his laptop had gotten
6 stolen.

7 And because of my relationship with Sergio and my
8 knowledge of how he did business, I remember someone from the
9 Hall of Justice, one of the specific bureaus, coming to contact
10 me regarding Sergio, if I could ask him to help locate this
11 laptop.

12 **Q.** And did you do that?

13 **A.** Yes.

14 **Q.** And was the laptop located, ultimately, by Sergio?

15 **A.** Ultimately, it was, yes.

16 But in that, that is how, as I recall, Mr. Furminger kind
17 of got to know Sergio, because Mr. Furminger got involved in
18 that investigation as well.

19 **Q.** And do you know from speaking with Mr. Furminger what the
20 nature of his relationship with Sergio was?

21 **A.** Uhm, Mr. Robles, Mr. Furminger, and myself, especially
22 Mr. Robles and myself, we had a very similar relationship with
23 Sergio in that items that we would remove/steal during searches
24 we would then give to Sergio to sell.

25 I, myself, bought some items from Sergio. And I believe

1 that was more of the nature of -- Mr. Furminger's relationship
2 with Sergio was more as a buyer.

3 Q. How do you know that?

4 A. Because he told me things he bought from him.

5 Q. Did you ever get anything from Sergio for free?

6 A. No, I don't believe so.

7 Q. Do you know from speaking to Mr. Robles whether he ever
8 got anything from Sergio for free?

9 A. Not that I'm aware of. And in dealing with Sergio,
10 oftentimes we would do so separately.

11 I would -- you know, if I had something I was going to
12 sell, I would do that on my own. And the same thing with the
13 others as well. And so oftentimes we were meeting him
14 individually. So not that I'm aware of.

15 Q. Was Sergio a source, a CI?

16 A. Yes, he was.

17 Q. And what officer was his handler, if you will?

18 A. I believe I registered him.

19 Q. Initially?

20 A. I can't -- I can't say that for sure, but I know -- in
21 terms of a source of information, he was a source of
22 information to many police officers. Probably many before I
23 was ever at Mission, and probably -- and after I was gone.

24 But in terms of formal registration, I know I had him
25 formally registered. But I don't know if anyone else did prior

1 to me.

2 **Q.** The commercial relationship that you had with Sergio, that
3 you described earlier, was that a legal relationship or illegal
4 relationship?

5 **A.** It was illegal.

6 **Q.** Why?

7 **A.** Well, because I was using him to sell stolen items for me.

8 **Q.** In addition to that illegal relationship, were there
9 occasions on which Sergio actually provided assistance to the
10 SFPD in -- in performing its official duties?

11 **A.** Numerous times.

12 **Q.** So it was both?

13 **A.** Absolutely.

14 **Q.** I want to direct your attention, Mr. Vargas, to an
15 incident that took place involving an individual by the name of
16 Manny.

17 Do you remember arresting somebody whose name, street name
18 perhaps, was Manny?

19 **A.** Yes.

20 **MR. HEMANN:** And, Your Honor, this pertains to tab 5
21 in the binder.

22 **BY MR. HEMANN:**

23 **Q.** Who, Mr. Vargas, was Manny?

24 **A.** Uhm, he was a pretty sizable drug dealer who controlled
25 territories in San Francisco -- I don't believe in the East

1 Bay, but I believe on this side of the Bay -- from, probably,
2 in San Mateo County and San Francisco County.

3 Q. What kind of drugs was he dealing?

4 A. He dealt with cocaine, meth, and heroin.

5 Q. Was -- how did Manny first come to your attention?

6 A. Uhm, we had developed a relationship -- and I should say
7 specifically Mr. Robles and I -- with an informant we called
8 The Shah. And The Shah used to be an employee of Manny's. And
9 that's how we came to know Manny.

10 Q. And what did you learn from The Shah --

11 MR. HEMANN: And this is not offered for the truth,
12 Your Honor.

13 BY MR. HEMANN:

14 Q. What did you learn from The Shah about Manny?

15 A. What Manny did was Manny, in a sense, ran a distribution
16 network --

17 Q. Let me stop you, Mr. Vargas. This is what The Shah told
18 you about what Manny did?

19 A. Yes, absolutely.

20 Q. And The Shah, just to elaborate on him a little bit, he's
21 an informant. What kind of informant -- what was his deal?

22 A. He was a -- well, a drug dealer, especially during his
23 employment with Manny; and later on a drug user; but a formal
24 informant, first of Mr. Robles and then myself.

25 Q. Was he an informant of Mr. Robles when you began working

1 with Mr. Robles in 2009?

2 **A.** Yes.

3 **Q.** And after Mr. Robles left did you continue using The Shah
4 as your informant?

5 **A.** Yes.

6 **Q.** Okay. So what did The Shah tell you about Manny's
7 business?

8 **A.** Basically, drug users would call a phone number that was
9 run by Manny, and put in an order for a specific type of
10 narcotics. One of those three, either heroin, cocaine, or
11 meth.

12 Manny then had multiple drivers driving multiple cars,
13 driving around the city. And they would basically order
14 pick-ups and order drop-offs at certain locations.

15 Manny's system were to put the drugs in balloons and color
16 code the balloons for the type of drugs. And Manny would tell
17 his driver, okay, drop three red balloons at this intersection.
18 And the driver would arrive there, and there would be a
19 purchaser there. They would pay the money. And the person
20 would drop the drugs and move on.

21 And The Shah was one of those drivers.

22 **Q.** Other than the information that you -- by the way, did
23 Manny have a -- a real name or another name that you became
24 aware of at some point?

25 **A.** Yes. But I just don't remember it right now.

1 Q. Would it refresh your recollection to look at a
2 San Francisco Police report regarding him?

3 A. Yes.

4 MR. HEMANN: Your Honor, I'm going to show the witness
5 Exhibit 247. It doesn't need to be displayed, but just to
6 refresh his recollection.

7 (Witness reviewing document.)

8 BY MR. HEMANN:

9 Q. Does that refresh your recollection as to Manny's real
10 name?

11 A. Yes.

12 Q. What was Manny's real name?

13 A. Sergio Vasquez. V-a-s-q-u-e-z.

14 Q. So other than the information that you obtained from
15 The Shah about -- about Mr. Vasquez, did you know whether he
16 was under investigation in a -- by other drug enforcement
17 agencies?

18 A. We later came to learn that -- "we" meaning myself,
19 Mr. Robles, and Mr. Furminger -- came to learn that that was,
20 in fact, the case.

21 Q. And at some point in time you actually arrested
22 Mr. Vasquez; correct?

23 A. Yes.

24 Q. Did you learn that before or after -- did you learn that
25 he was the subject of a large investigation before or after you

1 arrested him?

2 **A.** Before.

3 **Q.** So at some point in time did you develop an interest --
4 you, Mr. Robles and Mr. Furminger -- in targeting Mr. Vasquez?

5 **A.** Yes.

6 **Q.** And did you do that knowing that he was the subject or a
7 subject in a larger investigation?

8 **A.** Yes.

9 **Q.** So why were you -- why were you interested in this?

10 **A.** We later came to find out that --

11 **Q.** When you say "later," be a little more specific.

12 **A.** Okay. For several weeks, with The Shah's help, myself,
13 Mr. Robles, and Mr. Furminger were targeting these drivers that
14 were delivering narcotics within the Mission District.

15 And we were -- "we" meaning the three of us -- were able
16 to affect several arrests of these drivers and recover pretty
17 substantial amounts of narcotics, especially, again,
18 considering the assignment that we had.

19 Subsequently, we learned that Mr. Vasquez was the target
20 of a federal investigation and part of a much larger
21 distribution network that had ties south of the border, into
22 Mexico.

23 And we subsequently learned that --

24 **Q.** Subsequently to talking to the Shah and prior to arresting
25 Mr. Vasquez?

1 **A.** Prior to arresting Mr. Vasquez, the three of us -- myself,
2 Mr. Robles, Mr. Furminger -- learned that there were pending
3 indictments, federal indictments. Basically, the case had come
4 to its fruition, and they were about to arrest everybody. But
5 they had lost track of Manny and three of his co-conspirators.

6 **Q.** So what did that lead you to do?

7 **A.** At this point, it was known by -- by these individuals
8 that were investigating Manny that we had a connection to Manny
9 through The Shah. And, you know, we were also, kind of,
10 somewhat tapped into the same organization but maybe through a
11 different avenue. And so we were asked, "If you see Manny, try
12 and grab him," because they had lost -- they had lost him,
13 essentially.

14 And they were just about to arrest him, but they didn't
15 know where he was, including his co-conspirators. So we were
16 asked if we saw him to grab him so they knew where he would be
17 at a location when they unsealed the indictments.

18 **Q.** So at some point in time did you get sufficient
19 information from The Shah that you were able to develop a plan
20 to actually arrest Manny?

21 **A.** Yes.

22 **Q.** And describe what happened, to the jury.

23 **A.** Manny had had so many drivers arrested that he, in fact --
24 it got to the point where he had to make the deliveries
25 himself.

1 And we learned from The Shah that Manny himself was, in
2 fact, making drug deliveries one morning. And we used The Shah
3 to try and order drugs from Manny, specifically to get him to a
4 location so that we could arrest him ourselves.

5 Q. Did you do that?

6 A. Yes.

7 Q. Where was that location?

8 A. Uhm, it was in the South of Market area, on one of the
9 little side alleys below Mission Street, near Natoma or Minna,
10 around Sixth and Eighth. In that general area.

11 Q. Outside the Mission District?

12 A. Yes.

13 Q. So you arrested him?

14 A. Yes.

15 Q. Was he in a vehicle?

16 A. Yes.

17 Q. You stopped the vehicle?

18 A. Yes.

19 Q. Who was there from the SFPD?

20 A. Uhm, myself and Mr. Robles for sure. I believe,
21 Mr. Furminger. And, I believe, we used -- we may have used
22 another unit there for the traffic stop.

23 Q. And when you say "the traffic stop," just pulling over the
24 vehicle initially?

25 A. The physical act of pulling the vehicle over, getting it

1 to stop.

2 **Q.** Once the vehicle stopped, what did you find?

3 **A.** We found -- well, Mr. Vasquez was there with his wife as
4 well as children -- but a sizable amount of narcotics as well.

5 **Q.** Based on locating the narcotics -- and, by the way, to
6 your knowledge, had an arrest warrant been issued related to
7 the larger indictments at that point in time? Was he wanted?

8 **A.** No, he was not. That had not happened yet.

9 **Q.** Okay. So based on the dope that you found in the car, did
10 you arrest Mr. and Mrs. Vasquez?

11 **A.** We arrested Mr. Vasquez and detained Mrs. Vasquez.

12 **Q.** Explain the difference between -- maybe it all seems the
13 same to the person in handcuffs, but explain the difference
14 between an arrest and a detention.

15 **A.** A detention isn't an arrest. The person may, in fact, be
16 released, given a certificate of release, with no arrest on
17 their record. Basically, at that moment in time, they're not
18 free to go. They are being held by police. But they may, in
19 fact, be later released.

20 **Q.** So is it -- is it appropriate to say that everybody is
21 initially detained, and sometimes those detentions become
22 arrests when the person is booked?

23 **A.** That's correct. Anytime a police officer says "stop" or
24 "don't move," that's kind of the beginning of the detention.
25 When you're not free, of your own volition, to make any

1 movement that's -- that's a detention.

2 **Q.** So were both Mr. and Mrs. Vasquez detained initially,
3 based on locating the drugs in the car?

4 **A.** Yes.

5 **Q.** And what did you do with them?

6 **A.** With the people or the drugs?

7 **Q.** With the people.

8 **A.** With the people, everybody was taken back to Mission
9 Station.

10 **Q.** Including the children?

11 **A.** Yes.

12 **Q.** And what did you do with Mr. and Mrs. Vasquez once you got
13 to Mission Station?

14 **A.** We attempted to interview them and, basically, generate
15 more information, attempting to get a consent to search their
16 residence.

17 **Q.** Was Mr. Vasquez forthcoming with information?

18 **A.** No.

19 **Q.** Was Mrs. Vasquez?

20 **A.** Yes.

21 **Q.** Did you find out something from her that you did not
22 previously know about their residence?

23 **A.** Yes.

24 **Q.** What did you find out?

25 **A.** Through The Shah we -- we -- and I believe it was one of

1 his residences. We thought we knew where Mr. Vasquez and his
2 wife and family lived. I believe it was in either East Palo
3 Alto or Redwood City. But when we --

4 **Q.** And when you say "we" thought they lived in East Palo Alto
5 or Redwood City, are you talking about you, Mr. Robles, or
6 Mr. Furminger, or, sort of, law enforcement generally who was
7 focused on them?

8 **A.** Not only us specifically, but I believe law enforcement
9 generally thought that that was his location.

10 **Q.** What did you find out that was different than that?

11 **A.** Mrs. Vasquez did, ultimately, give us a consent to search
12 her residence. But when she wrote out the address she wrote
13 out an address that we were completely unaware of.

14 **Q.** Where was that address?

15 **A.** I believe it was in Newark.

16 **Q.** Newark, California?

17 **A.** California, yes.

18 **Q.** When you found out that she -- they had a home in Newark,
19 what did you do?

20 **A.** Well, with the consent to search we then contacted someone
21 from Newark P.D., got permission from someone there at the
22 station, and drove out there. Myself, Mr. Robles, and
23 Mr. Furminger drove out there to affect that search.

24 **Q.** You did not call the San Francisco Police Department
25 Narcotics Unit; correct?

1 **A.** No.

2 **Q.** You did not call the DEA; correct?

3 **A.** No.

4 **Q.** Why did you call a Newark -- the Newark Police Department?

5 **A.** We were going to be responding into another jurisdiction.

6 And that would be, kind of, standard protocol if we were, you
7 know, conducting any sort of police business, to notify them
8 that, in fact, we would be there.

9 Also, we were plainclothes police officers in an unmarked
10 police car. And so, you know, to the common eye we may look
11 like criminals attempting to break into a house when, in fact,
12 we were law enforcement.

13 **Q.** How were you planning on getting into the house?

14 **A.** They don't -- I don't believe we were provided keys, but
15 Mrs. Vasquez told us that a window, a front window of the house
16 was unlocked.

17 **Q.** So did you call the police so that the police didn't show
18 up when they -- somebody saw you climbing into the window?

19 **A.** Essentially, yes.

20 **Q.** So you drove down to Newark?

21 **A.** Yes.

22 **Q.** When you got to Newark, what did you do?

23 **A.** We met with an officer from that department, and then
24 entered the residence and affected the search.

25 **Q.** When you say "affected the search," what do you mean?

1 **A.** We just started going through the place. We started
2 searching everything.

3 **Q.** Did you search inside the house?

4 **A.** Yes.

5 **Q.** Did you find any evidence of drug dealing/narcotics
6 trafficking in the house?

7 **A.** Yes.

8 **Q.** What did you find, generally?

9 **A.** Uhm, we found large trash bags, like garden trash bags,
10 inside the dishwasher, which obviously stood out as very odd as
11 why would someone take the time to put a trash bag inside a
12 dishwasher to wash it.

13 But in taking out the trash bag it had an extremely strong
14 scent of vinegar, which is a scent that's associated with
15 heroin. So we thought maybe this is the right -- this is the
16 spot, because bulk heroin is possibly coming in these bags.
17 They're trying to wash them to get rid of the smell.

18 **Q.** Did any of the officers that were there, you included,
19 find cash in the house?

20 **A.** Yes.

21 **Q.** Which officer found cash in the house?

22 **A.** I believe it was Mr. Furminger.

23 **Q.** Was the Newark police officer aware, or do you know
24 whether the Newark police officer was aware that cash was found
25 in the house?

1 **A.** Yes.

2 **Q.** How do you know that?

3 **A.** Because I think we told him.

4 **Q.** Was he assisting in the search of the house?

5 **A.** Yes.

6 **Q.** So at some point in time did you leave the inside of the
7 house and go elsewhere to continue the search?

8 **A.** Yes.

9 **Q.** And where did you go search?

10 **A.** I went into their enclosed backyard area.

11 **Q.** Why did you do that?

12 **A.** It was another location to search. And, also, just kind
13 of thinking about who we were dealing with, and all of that, I
14 knew there was a possibility that there may be something in the
15 backyard.

16 **Q.** Did you -- what did you do when you got out there? What
17 did you see?

18 **A.** I looked around at the yard. I noticed that the yard
19 wasn't really landscaped well. It was pretty sparse. But in
20 looking around in the yard, they had a shovel sitting out there
21 in the backyard. And so that, kind of, stood out to me because
22 there was a shovel but there's no landscaping.

23 And so I just started, kind of, poking my foot around onto
24 the ground. And, you know, the ground was pretty hard-packed.
25 And as I was just poking around, you know, I was touching

1 hard-packed ground, hard-packed, hard-packed, and all the
2 sudden hit a patch of ground that was soft.

3 **Q.** And, in your experience, what did you think about that
4 soft patch of ground?

5 **A.** Well, putting the totality of everything together, the
6 type of people we were investigating, kind of what I had heard
7 from other informants as well as my own information, you know,
8 I had a general sense that -- that Mexican Nationals tend to
9 bury drugs and money.

10 And so seeing the shovel, seeing no landscaping with it,
11 nothing else really dug up, but feeling the soft-packed ground,
12 I thought I might have found the location where either drugs or
13 money, or both, were hidden.

14 **Q.** Did you dig up that location?

15 **A.** I did.

16 **Q.** What did you find?

17 **A.** I found both drugs and money.

18 **Q.** What did you find in terms of drugs?

19 **A.** More than an ounce -- I found heroin. And I don't
20 remember the exact amount. It may have been multiple ounces of
21 heroin.

22 **Q.** And did you find anything else?

23 **A.** Yes.

24 **Q.** What else did you find?

25 **A.** Cash.

1 Q. And when you first saw it, describe what you saw.

2 A. Uhm, in digging into the ground I came up with a little
3 bag that -- and I opened that up, and it had heroin in it.

4 And then I continued to dig further, and found a much
5 larger bag. And that bag had a substantial amount of cash in
6 it.

7 Q. As you stood in the backyard and looked at that cash, did
8 you count it at that time?

9 A. No.

10 Q. What did you do with the cash?

11 A. I then took the cash. And it was pretty much a large
12 volume. And I actually walked from the backyard, through the
13 house, into the front yard, and put it in -- in our car.

14 Q. When you did that, as you were walking back through the
15 house did you see any of the other officers?

16 A. No.

17 Q. Could you perceive where they were?

18 A. I believe -- this is a two-story residence. I'm pretty
19 sure everybody was upstairs, still searching, at that point.

20 Q. As you walked through the house and got upstairs, did you
21 announce to anybody -- or got through the house, into the car,
22 did you announce to anybody that you had located drugs or cash?

23 A. When I came back from dropping the money off, into the
24 car, then I announced to them that I had found drugs.

25 Q. You didn't tell anybody that you had found the money?

1 **A.** No.

2 **Q.** Why not?

3 **A.** My concern initially was the -- the Newark officer. I
4 didn't want him to be aware that I had found money.

5 **Q.** Did you intend to keep the money?

6 **A.** Yes.

7 **Q.** At some point in time did the search wrap up?

8 **A.** Yes.

9 **Q.** And when the search wrapped up, did the Newark police
10 officer go his own separate way?

11 **A.** Yes.

12 **Q.** And did you and Mr. Robles and Mr. Furminger return to
13 San Francisco?

14 **A.** Yes.

15 **Q.** Did you return in the same car?

16 **A.** Yes.

17 **Q.** And where were the three of you in the car?

18 **A.** I recall Mr. Furminger was driving, and Mr. Robles was in
19 the front passenger seat. And I was sitting in the backseat.

20 **Q.** At some point in time did you talk with them about the
21 money?

22 **A.** Yes.

23 **Q.** And could you describe for the jury how that -- in the
24 car?

25 **A.** Yes.

1 Q. On the way home?

2 A. Yes.

3 Q. Can you describe for the jury how that conversation took
4 place?

5 A. Initially, we were talking about the search and everything
6 we had located. And honestly, honestly, they -- "they" being
7 Mr. Robles and Mr. Furminger -- were disappointed. We
8 recovered some money, but nothing of real, real substance.

9 And then I both informed them, like, "Hey you guys, I
10 found it."

11 Q. Did the three of you drive down together to Newark?

12 A. Yes.

13 Q. And on the way, did you discuss the possibility of finding
14 cash in the house?

15 A. Yes.

16 Q. Tell the jury about that discussion.

17 A. We were both -- we knew that especially at this point,
18 realizing that Manny was the focus of a very large
19 investigation, that this was the type of dealer that we've
20 rarely came into contact with, especially to be able -- for us
21 to effect arrests on someone of his stature. And so, the
22 possibility of a large amount of money was definitely on our
23 minds.

24 And so we were -- you know, there was anticipation. We
25 were excited, like wow, this could really be good. We could

1 really hit a big score here.

2 **Q** And when they expressed disappointment in the car on the
3 way home, did you respond to that somehow?

4 **A** Yes.

5 **Q** How did you respond?

6 **A** I told them that I had found it. You know, I don't
7 believe they were aware of it at all at that point. And I told
8 them that I had, in fact, found a substantial amount of cash.

9 **Q** And, did you time your disclosure of this to be -- to
10 surprise them somehow, or to please them somehow?

11 **A** Exactly that. So, to surprise them. You know, they were
12 expressing disappointment, and I kind of, you know, I was --
13 you know, I knew that I had found it, and so I kind of let them
14 in on it, that I had, in fact, found it.

15 **Q** When you returned to Mission Station, were Mr. and
16 Mrs. Vasquez both still there?

17 **A** I believe -- I don't know if Mr. Vasquez was there. He
18 may have, in fact, been transported down to 850 Bryant at that
19 time. But I believe Ms. Vasquez was there.

20 **Q** And, was Ms. Vasquez -- Mrs. Vasquez released?

21 **A** Yes.

22 **Q** And, who authorized her release?

23 **A** Well, a supervisor probably released her. That could have
24 been Mr. Furminger, I don't recall exactly on the report,
25 but -- yeah.

1 **Q** Did you and Mr. Furminger and Mr. Robles all concur with
2 Mrs. Vasquez's release?

3 **A** Yes.

4 **MR. HEMANN:** Your Honor, this would probably be a
5 pretty good time for a break.

6 **THE COURT:** Okay. Ladies and gentlemen, we're going
7 to take our recess now. We are going to be in recess until
8 twenty to 11:00.

9 Remember the admonition given to you: Don't discuss the
10 case, allow anyone to discuss it with you, form or express any
11 opinion.

12 (Jury excused)

13 **MR. HEMANN:** Thank you, Your Honor.

14 (Recess taken from 10:22 to 10:41 a.m.)

15 (The following proceedings were held outside of the
16 presence of the Jury)

17 **THE COURT:** Okay, bring in the jury.

18 (The following proceedings were held in the presence of
19 the Jury)

20 **THE COURT:** Please be seated.

21 Okay. Let the Record reflect all jurors are present.
22 Parties are present; witness is on the stand.

23 You may proceed.

24 **MR. HEMANN:** Thank you, Your Honor.

25

1 **BY MR. HEMANN:**

2 **Q** Mr. Vargas, before the break, we were talking about the --
3 the search that you conducted in Newark, California.

4 **A** Yes.

5 **Q** Do you remember about how big the backyard was?

6 **A** It wasn't a huge backyard. Maybe, um, maybe about 30 feet
7 deep and about 20 feet wide, something like that. It wasn't --
8 wasn't a huge area.

9 **Q** Could you describe it or size it based on landmarks here
10 in the courtroom, somehow?

11 **A** Sure. It was smaller than this area (Indicating), being
12 behind Your Honor's seat, the wall, over to that first row
13 there. Smaller than this area.

14 If you were to cut out the jury box maybe, maybe the
15 smaller rectangle, maybe to the front of Your Honor's desk here
16 to that wall (Indicating), eliminating the jury box, just a
17 rectangular shape.

18 **Q** When you got into the car, and told Mr. Furminger and
19 Mr. Robles that you -- you had money, at that point in time,
20 had you counted the money yet?

21 **A** No.

22 **Q** When did you count the money?

23 **A** I counted the money on the ride back from Newark to
24 San Francisco.

25 **Q** And, did you count it in the presence of Mr. Robles and

1 Mr. Furminger?

2 **A** Yes.

3 **Q** How much money was there?

4 **A** A little bit over \$31,000.

5 **Q** Did you and Mr. Robles and Mr. Furminger discuss how to
6 divide the money?

7 **A** I don't know if we discussed it, but I -- I split the
8 money into three exact portions of \$10,000 each.

9 **Q** And did you do that in the car?

10 **A** Yes.

11 **Q** And what did you do with the money? With those three
12 exact portions?

13 **A** I gave 10,000 to Mr. Furminger; I, myself, kept 10,000; I
14 gave 10,000 to Mr. Robles.

15 And the additional amount was also given to Mr. Robles,
16 with the intention that it would end up going to the Shah as
17 payment for his information. So, I believe that was over
18 \$1,000, could have been 12, \$1,300 additional to the 30.

19 **Q** Do you know whether that additional thousand or so dollars
20 ended up going to the Shah?

21 **A** I do not.

22 **Q** After you split the money up with Mr. Furminger and
23 Mr. Robles, did there come a time that you talked about it
24 again with them?

25 **A** Yes.

1 Q How long afterwards?

2 A A couple of days after, after we recovered the cash.

3 Q Do you remember where that conversation took place?

4 A Yes.

5 Q Where was it?

6 A It was in Noe Valley; it was one of the smaller streets
7 off of 24th Street. Parallel to it, so maybe Elizabeth or one
8 of those smaller streets.

9 Q Was it in a particular place? Or was that on the street?

10 A It was on the a street. And we were driving in the -- in
11 our Crown Victoria, unmarked police car.

12 And, and basically I -- I didn't know what to do with that
13 much cash. I had never really dealt with a huge amount of cash
14 before, so I kind of had this anticipation, and I was dying to
15 ask them what they were doing with their portions of the money.

16 And so I asked them, "What are you guys doing? What are
17 you guys doing with all this money?"

18 And I was hushed, told not to speak by -- by
19 Mr. Furminger. We parked the car, and got out of the car. We
20 then turned off our police radios.

21 And, there used to be a belief that there was a function
22 with our police radios that gave Dispatch the ability to
23 remotely activate our microphones, basically key it in so that
24 you could hear a conversation without the officer, themselves,
25 keying it.

1 So we actually took the batteries out of our radios,
2 enabling it useless, and then discussed what we were going do
3 with the money.

4 **Q** What was your plan for dealing with your portion of the
5 money, the \$10,000?

6 **A** I honestly didn't know. I think that was part of the
7 reason why I was so curious what they were going to be doing
8 with their portions of the money.

9 **Q** How ultimately did you spend your \$10,000?

10 **A** I bought a -- bought a large television. And, later on, I
11 purchased a bicycle.

12 **Q** Did you talk to Mr. Furminger about what his intention was
13 with the money that he obtained, the \$10,000 he obtained?

14 **A** Yes.

15 **Q** What did Mr. Furminger tell you?

16 **A** He said he was putting in solar skylights in his
17 residence.

18 **Q** Anything else?

19 **A** Not that I recall, no.

20 **Q** Did you talk to Mr. Robles about what he was doing with
21 his portion of the cash?

22 **A** Yes.

23 **Q** What did he tell you?

24 **A** He told me he was going to buy a bicycle.

25 **Q** Did he describe to you at that point in time the bicycle

1 that he was interested in?

2 **A** Then, no. But just the -- that he was going to be
3 actively searching to purchase the bicycle.

4 **Q** Did you know prior to that that he had been in the market
5 for a bicycle?

6 **A** No.

7 **Q** After he told you that, did you have further discussions
8 with Mr. Robles about the bicycle?

9 **A** Yes.

10 **Q** What were those discussions?

11 **A** He was actively looking on Craigslist. And I'm not
12 talking about a normal bicycle. I'm talking about a very, very
13 high-end road bicycle. And so at one point we actually met
14 with an individual so that he could view the bicycle.

15 It was -- I remember the bike. It was a Belgian bicycle
16 made by the company Ridley. Very, very high-end bicycle. Even
17 used, that bicycle would be several thousand dollars. And so,
18 we went and viewed that bicycle, but Mr. Robles did not
19 purchase that bike.

20 **Q** Ultimately did Mr. Robles purchase a bike -- did you
21 discuss with Mr. Robles him purchasing a bicycle with that
22 money?

23 **A** Yes.

24 **Q** Do you know what kind of bicycle it was that he purchased?

25 **A** Yes.

1 Q What kind of bicycle was it?

2 A He purchased a Pinarello Dogma, an Italian road bike,
3 very, very high-end and very rare.

4 Q Did you physically see the bicycle in the immediate
5 aftermath of Mr. Robles purchasing it?

6 A I don't know if I saw it immediately after, but we
7 definitely -- "we" meaning myself and Mr. Robles, we definitely
8 talked about it.

9 I, myself, am a pretty avid road cyclist, and I know that
10 particular bike very well. So, I mean, I was really jealous
11 and I was real interested in how it rode, what it was like
12 riding that bike. And so we talked about it, several times,
13 about different bike rides he had gone on the bike, its
14 performance, that sort of thing.

15 Q At some point in time did you come into possession of that
16 bike?

17 A Yes.

18 Q How did that come about?

19 A Mr. Robles just stopped riding the bike that much. And, I
20 really wanted it. And I told him that. And, "That's terrible
21 that you aren't riding that bike; it's collecting dust." And I
22 would bother him about it, tell him to sell it to me. "Just
23 sell me the bike."

24 I would bother him about it frequently. "You know you
25 don't want that bike; you know I deserve it. Just sell it to

1 me." And so eventually I did purchase that bike from him.

2 **Q** Would you recognize the bicycle if you saw it today?

3 **A** Yes.

4 **Q** In fact, did you provide the bicycle frame to the FBI
5 after you began cooperating?

6 **A** Yes.

7 **MR. HEMANN:** Your Honor, may I show the witness an
8 exhibit?

9 **THE COURT:** (Inaudible)

10 **MR. HEMANN:** Showing the witness what's marked as
11 Exhibit 298.

12 (Witness examines document)

13 **Q** Is that a picture of the bicycle?

14 **A** Yes.

15 **MR. HEMANN:** Your Honor, we move 298 into evidence.

16 **THE COURT:** 298, admitted.

17 (Trial Exhibit 298 received in evidence)

18 (Document displayed)

19 **BY MR. HEMANN:**

20 **Q** And just so -- I guess we've got the frame, itself, here.
21 Is this the frame that is the bicycle that is depicted in that
22 photograph?

23 (Witness examines item)

24 **A** Yes, it is.

25 **Q** And this is the -- this is the bicycle that you purchased

1 from Mister -- Mr. Robles, with the money that you took from
2 the house in Newark.

3 **A** Yes.

4 **THE COURT:** That will be admitted, as well.

5 **MR. HEMANN:** Yes, thank you, Your Honor.

6 (Reporter interruption)

7 **MR. HEMANN:** Could we just use the same number for the
8 picture and the frame, Your Honor?

9 **THE COURT:** Yeah, picture of bicycle and frame of
10 bicycle will be 298.

11 **MR. HEMANN:** Thank you.

12 **BY MR. HEMANN:**

13 **Q** In the aftermath of the Manny -- well, let me stop. Did
14 you do anything else with regard to the -- the Sergio Vasquez
15 investigation?

16 **A** Yes.

17 **Q** What else did you do?

18 **A** Um --

19 **Q** Let me direct your attention to the couple of days after
20 the search of the Newark house.

21 **A** Yes.

22 **Q** What did you do?

23 **A** Again, with information provided from the Shah, we learned
24 that Mrs. Vasquez, along with two other co-conspirators, were
25 then -- basically, taken up the job, and were actually making

1 the narcotics deliveries, themselves. Again, in the Mission
2 District.

3 And, once we became aware of the location, we responded
4 out to that location and stopped that car, effected a traffic
5 stop. Stopped that car, and recovered quite a bit of narcotics
6 from that car with them.

7 **Q** And at that point in time, was Mrs. Vasquez arrested?

8 **A** Yes.

9 **Q** After the Vasquez arrests, did you receive any
10 commendations for your work in connection with that case?

11 **A** Yes.

12 **Q** How did you come about receiving those -- that
13 commendation?

14 **A** Mr. Furminger, who was our supervisor, put up myself,
15 Mr. Robles, and himself up for a commission commendation for
16 our work as part of the larger ultimate federal investigation
17 in that entire case, which Manny and those co-conspirators,
18 including his wife, were a target.

19 **Q** And who amongst you, the three of you, received
20 commendations?

21 **A** All three of us. Myself, Mr. Robles and Mr. Furminger
22 received a Police Commission commendation.

23 **Q** Was that an unusual commendation to receive?

24 **A** It was much higher than the standard sort of inter-station
25 commendation. So it came with a -- on a parchment, a big

1 proclamation. We wear a formal uniform and the jacket, we call
2 it an Ike jacket. And there was actually little ribbon that
3 comes along with that commendation, and it gets permanently
4 placed on your jacket. So, it was a commendation of note.

5 **Q** And was this -- the \$30,000, you describe it as -- how
6 significant, relative to the other thefts that you engaged in?

7 **A** The largest by far, many times over.

8 **Q** Did you continue to look for similar sized or big hits?

9 **A** Sure.

10 **Q** And did you discuss doing that with Mr. Furminger and
11 Mr. Robles?

12 **A** Yes.

13 **Q** At some point in time, did you get a tip from Cesar
14 Hernandez or some information from Cesar Hernandez with regard
15 to somebody by the name of El Moreno?

16 **A** Yes.

17 **Q** What was the nature of that tip?

18 **A** Moreno, as we called him, was someone that Cesar Hernandez
19 was very familiar with, and had known for many years. And, he
20 described him to us as a pretty sizeable heroin trafficker,
21 dealing in heroin in, I believe, the Tenderloin area. And
22 sizable amounts, every day, day after day.

23 **Q** Did you formulate some sort of plan that was directed
24 towards El Moreno?

25 **A** Yes.

1 **Q** What was the plan that you developed, and who did you
2 develop it with?

3 **A** In talking to Cesar, he described to us that Moreno had a
4 -- what he would do is he had -- basically he would dig holes
5 in Golden Gate Park, and that's where he would stash his drugs
6 and money. And so we were trying to figure out a way to follow
7 him back to those locations.

8 We knew where he lived; we knew his residence. But based
9 on information from Cesar Hernandez, we knew that there would
10 be nothing inside the residence. That if we were to in fact
11 generate a search warrant for the place, that the residence
12 would be clean. The locations where the drugs and the money
13 were in fact somewhere else, buried in the ground.

14 **Q** Now, that sounds a little crazy to somebody who uses a
15 bank. But was that information that somebody's burying cash in
16 Golden Gate Park something that struck you as being irrational?

17 **A** No, especially based -- after the Manny incident, the idea
18 of people burying their money and drugs underground seemed
19 pretty credible to me.

20 **Q** And had you discussed the practice, if you will, of
21 burying money in the backyard or in the ground with
22 Mr. Hernandez?

23 **A** Yes.

24 **Q** So, what plan did you decide, what was the -- the plan to
25 find this money? How were you going to use Mr. Moreno to find

1 this money?

2 **A** We needed to either have a purchase or we just needed to
3 figure out some sort of way to necessitate him to respond back
4 to those locations, either by -- not purchasing drugs, because
5 that was a common practice, but basically catch him at the end
6 of his shift of serving drugs, going back to his -- you know,
7 back to those hiding holes, or something along those lines.

8 Or in the case with Mr. Hernandez, have Mr. Hernandez pay
9 off some money to Moreno, so that Moreno could then take the
10 money back to his hiding locations.

11 **Q** How did you make that happen? Or, did you make that
12 happen?

13 **A** Yes.

14 **Q** How did you make it happen?

15 **A** Cesar Hernandez, you know, using his long-time
16 relationship with Moreno, was fronted or given some narcotics
17 on credit that he would then in turn sell, and give the, kind
18 of, wholesale amount back to Moreno, keeping the profits for
19 himself.

20 **Q** And did he do that?

21 **A** Yes.

22 **Q** What sort of drug was it?

23 **A** Heroin.

24 **Q** Were you involved in watching or observing or surveilling
25 or something the money going back to El Moreno from

1 Mr. Hernandez?

2 **A** We attempted to. Yes.

3 **Q** How did that work out?

4 **A** We tried to -- we knew where Moreno would be meeting Cesar
5 to pick up that money, and we knew in the general sense of what
6 his destination was ultimately, and we tried to follow him back
7 to that location.

8 But Moreno was good. He -- you know, he used a lot of
9 what you would call counter-surveillance techniques. He would
10 park, stop for a while, pull forward again, make a U-turn and
11 go back, leave his car for a while, walk back to the car. All
12 these sort of types of techniques, to see if there was anybody
13 following him or anybody behind him. And all the time he's
14 looking around, himself, to see if anyone is around.

15 **Q** Now, did you actually follow him in the direction of
16 Golden Gate Park?

17 **A** We tried, yes.

18 **Q** Did you -- did you follow him ultimately to a place where
19 he was digging holes?

20 **A** Yes.

21 **Q** And did you see him digging holes?

22 **A** We never got -- I never got close enough to actually see
23 him digging holes. We followed him, I mean, generally, in the
24 -- in an area of Golden Gate Park, but we could never get
25 anywhere real close to him.

1 Q And I sort of let the "we's" get out of hand here a little
2 bit. When you say "we," in this case, who are you talking
3 about?

4 A Mr. Robles and myself.

5 Q Not Mr. Furminger.

6 A No.

7 Q So, you get out there near him in Golden Gate Park. And
8 then, is there something that you all followed up on to try and
9 find the dope and the money?

10 A I wouldn't say we got very near. I mean, we knew in the
11 most general sense an area where he was. But once he left the
12 area, we kind of went to that general area -- "we" being
13 myself, Mr. Robles and Cesar -- in an attempt to locate where
14 he was. But, we're in the park. And all it is is sticks and
15 dirt and rocks and trees.

16 And so we just never really -- we couldn't find anything;
17 we couldn't find anywhere that looked freshly disturbed. We
18 realized it was going to be close to impossible to locate
19 anything.

20 Q Did you ever find any cash there?

21 A No.

22 Q So, you worked at the Mission District Station with
23 Mr. Robles throughout 2009?

24 A Yes.

25 Q Were there occasions before 2009 that you would be asked

1 by another law enforcement agency to assist in will some
2 particular way? The FBI, the DEA, ATF?

3 **A** Yes.

4 **Q** Et cetera? Was there an occasion on which you were asked
5 by the ATF to assist in a search?

6 **A** Yes.

7 **Q** How did that come about, from what you know?

8 **A** I was working at -- working my assignment at Mission
9 Station, with Officer Robles, and we were requested to respond
10 out to a location on Potrero Avenue to assist the ATF in
11 executing a search warrant.

12 **Q** And did you and Mr. Robles ultimately then go out and do
13 that?

14 **A** Yes.

15 **MR. HEMANN:** Your Honor, if I could have the witness
16 look at a photograph that's in evidence?

17 Exhibit 271, please, Ms. Lane.

18 (Document displayed)

19 **MR. HEMANN:** And, the second page.

20 (Document displayed)

21 **BY MR. HEMANN:**

22 **Q** Is that the residence, Mr. Vargas?

23 **A** Yes.

24 **Q** What was to be your role in assisting the ATF with regard
25 to this residence (Indicating)?

1 **A** Just, assist. They wanted just local law enforcement
2 there. And we assisted them for a period of time, dealing with
3 all of the folks that were detained in that residence. As well
4 as assisting them with the actual searching of the residence.

5 **Q** Do you recall where you searched within that residence?

6 **A** Yes.

7 **Q** Where was that?

8 **A** All over the house. That lower level, that garage area,
9 behind that, there was a small in-law apartment. That second
10 level was the living level, but we searched there as well. But
11 the third level were all bedrooms. And we searched all of
12 those areas as well.

13 **Q** Did you search in the company of anybody?

14 **A** Many people. There were times when I was alone, and --
15 and several times where there were multiple people searching an
16 area at the same time.

17 **Q** Did you ever search in the company of Mr. Robles?

18 **A** Yes.

19 **Q** And do you remember any part of the house that you
20 searched with Mr. Robles?

21 **A** Yes.

22 **Q** What part of the house?

23 **A** The bedroom -- well, what I guess would be deemed the
24 master bedroom of that house.

25 **Q** Would you describe what that master bedroom -- sort of how

1 it was configured, what it looked like, to the jury?

2 **A** Upon entry to the door, there was a large bed kind of
3 placed in the center of the room, and then closets on either
4 side of it.

5 (Off-the-Record discussion between counsel)

6 **THE WITNESS:** Of that bed.

7 **BY MR. HEMANN:**

8 **Q** So you searched there. Were you in that room with
9 Mr. Robles?

10 **A** I was there, alone, and also in there with Mr. Robles.

11 **Q** What were you searching for? What were your directions
12 from the ATF as to what to look for?

13 **A** Well, this was a gun search warrant, so we were looking
14 for firearms as well as any -- any other -- at this point it's
15 contraband, so basically anything illegal. It could be drugs,
16 it could be money, any of that sort of thing. But I think
17 primarily we were looking for guns.

18 **Q** At some point in time when you and Mr. Robles were
19 searching that room, do you remember Mr. Robles finding
20 anything?

21 **A** Yes.

22 **Q** What was it that he found?

23 **A** He found some cash.

24 **Q** How did you find that out?

25 **A** He found some cash and laid it out on the bed briefly, I

1 believe, and -- and just kind of motioned me out of the room,
2 and shut the door behind me for a while. And, basically
3 placing himself in the bedroom.

4 **Q** What were you doing out -- you were -- is there a hallway
5 out there?

6 **A** Yes. I was then standing in the hallway, basically in
7 front of that bedroom door.

8 **Q** Do you know why you were doing that?

9 **A** At that point I was acting as a lookout.

10 **Q** How long were you standing out there?

11 **A** Seconds. Just -- less than a moment, less than a minute.

12 **Q** And then, did you then come into contact again with
13 Mr. Robles?

14 **A** Well, yes. Mr. Robles opened the door, and the cash was
15 gone off the bed, and he walked out.

16 **Q** Did you walk out with him?

17 **A** Um, yes, out of that area, yes, but probably either to
18 continue the search or that sort of thing, just to continue on
19 with what we were doing at that point, out.

20 **Q** Did you locate a firearm and some ammunition in that room?

21 **A** I did not, no.

22 **Q** Do you know whether Mr. Robles located a firearm and some
23 ammunition in that room?

24 **A** I don't believe he did, either.

25 **Q** About how long after you -- the incident with the money

1 did you all leave the search site?

2 **A** I don't recall the exact time. I don't believe it was too
3 much longer. I don't believe it was hours longer. But some
4 time later, after that, we did leave. They concluded the
5 search.

6 **Q** Say again; I'm sorry?

7 **A** They, being the ATF, concluded the search.

8 **Q** Had you and Mr. Robles traveled to the search site
9 together?

10 **A** Yes.

11 **Q** Did you leave together?

12 **A** Yes.

13 **Q** Did you go somewhere in particular after you left?

14 **A** Yes.

15 **Q** Where did you go?

16 **A** We went to a very, very small side alley behind the
17 station, in the car, and sat in the car. And Mr. Robles
18 reached in his pocket and pulled out a wad of cash, which he
19 gave me half.

20 **MR. HEMANN:** And, Ms. Lane, could you put up Exhibit
21 289?

22 (Document displayed)

23 **MR. HEMANN:** Are you able to blow up a portion of
24 this? Can you blow up the portion around Mission Station, sort
25 of the block or two around Mission Station in the middle of

1 this?

2 (Document displayed)

3 **MR. HEMANN:** That's a little hard to see on this map.

4 **BY MR. HEMANN:**

5 **Q** Are you able to see on this map where that little alley
6 was that you were in?

7 **A** I'm very familiar with it, so I know where it should be,
8 yes.

9 **Q** Where would it be, relevant to the dot that is Mission
10 Station?

11 **A** Okay. If you look at 18th Street and then start moving to
12 the left from Valencia up to Guerrero, there's a small alley
13 there that stems from the right.

14 Shortly in on that, that little alley there, there's an
15 additional alley that heads back towards Valencia Street,
16 behind the station. It would be there. Kind of below the blue
17 dot, essentially.

18 **Q** Below and to the left?

19 **A** Yes.

20 **Q** Did you split up the money in the car, or did you get out?

21 **A** In the car.

22 **Q** Did you -- how much did you receive? Approximately.

23 **A** Approximately about \$1,000, maybe a little bit more than
24 that.

25 **MR. HEMANN:** Thank you.

1 (Document taken off display)

2 **BY MR. HEMANN:**

3 **Q** So, Mr. Vargas, when you left the SFPD in 2012, were you
4 under investigation for some of the activities that ultimately
5 became part of this case?

6 **A** Yes.

7 **Q** And, eventually were you charged were any crimes by the
8 federal government?

9 **A** Yes.

10 **Q** And when was that?

11 **A** I believe that was February of -- of this year. 2014.

12 **Q** And were you charged in the same charging document as
13 Mr. Furminger and Mr. Robles?

14 **A** Yes.

15 **Q** When you first were charged, did you enter a plea?

16 **A** Yes.

17 **Q** What was the plea that you entered, initially?

18 **A** Not guilty.

19 **Q** At some point in time did you change your plea from not
20 guilty to guilty?

21 **A** Yes.

22 **Q** When was that?

23 **A** Gosh, that was -- that was not too long ago. A few weeks
24 ago. I don't remember -- sorry, I don't recall the exact date.

25 **Q** And did you change your plea in this building, in this

1 very courtroom?

2 **A** Yes, I did. In front of Your Honor.

3 **Q** Why did you change your plea?

4 **A** Because I'm guilty.

5 **Q** Before you changed your plea and pled guilty, had you
6 reviewed the evidence that had been provided to you by the U.S.
7 Attorney's office in connection with the case?

8 **A** Yes.

9 **Q** Did you enter into any agreement with the United States in
10 connection with your guilty plea?

11 **A** Yes.

12 **Q** What sort of agreement was that?

13 **A** I --

14 **Q** What was it called?

15 **A** Oh, it's called "Plea Agreement."

16 **Q** And in that agreement, did you agree to plead to
17 particular crimes?

18 **A** Yes.

19 **Q** What crimes did you agree to plead to? The way you would
20 describe them.

21 **A** All the crimes that I was charged with, which included
22 theft, which included providing narcotics to be sold,
23 conspiracy to provide those narcotics, as well as -- this is
24 the one that's tricky -- committing an offense while working
25 for an agency that receives federal funds, federal funding.

1 Q And that agency in this case being --

2 A The San Francisco Police Department.

3 Q Was there one charge that the government dropped?

4 A Yes.

5 Q What charge is that?

6 A I believe that was the civil-rights violation.

7 Q In the plea agreement, were you made any promises
8 regarding your sentence?

9 A Promises regarding my sentence? No.

10 Q And in connection with the plea agreement, did you agree
11 to testify and cooperate with this -- with this continuing
12 prosecution and investigation?

13 A Yes.

14 Q Why did you do that? What motivated you to do that?

15 A I'm guilty. And it was my full belief that I would be
16 found guilty.

17 Q Did you, under the plea agreement, get anything in return
18 for your cooperation?

19 A That based on my level of cooperation, there may be
20 leniency towards me in terms of sentencing, either -- through a
21 recommendation from your office.

22 Q And is that your hope, Mr. Vargas?

23 A Yes.

24 Q That there is some leniency?

25 A Yes.

1 Q Do you have an understanding, under the plea agreement and
2 under the law, who ultimately makes the decision as to your
3 sentence?

4 A Yes.

5 Q Who is that?

6 A And that's Your Honor.

7 Q After the Potrero search that resulted in the -- you
8 receiving \$1,000, did you continue with Mr. Robles and
9 Mr. Furminger to commit the same sorts of crimes?

10 A Yes.

11 Q Did you ever do one of these thefts out at a place in the
12 Outer Richmond?

13 A Yes.

14 Q And, do you remember where that was, roughly?

15 A Yes.

16 Q Where was it?

17 A It was off of 19th Avenue. I would call that the Lakeview
18 area, but yes.

19 MR. HEMANN: Your Honor, Exhibit 280 is in evidence.
20 May I show it to Mr. Vargas?

21 THE COURT: Yes.

22 BY MR. HEMANN:

23 Q Is this a police report regarding that incident,
24 Mr. Vargas?

25 (Witness examines document)

1 **A** Yes.

2 **Q** And what was the address of that incident?

3 **A** The address of this incident is on 44th Avenue. This is
4 in the Richmond.

5 **Q** Describe to the jury how that theft initially came about.
6 What led you out there?

7 **A** I don't recall who provided the information, but
8 obviously, because this is a specific person, as well as the
9 location, we were provided information regarding this
10 individual who we subsequently arrested.

11 **Q** Who was that individual?

12 **A** Mr. Zaychenko, Z-A-Y-C-H-E-N-K-O.

13 **Q** When you say "we," who's "we"?

14 **A** Myself and Mr. Robles.

15 **Q** Did you and Mr. Robles go out to Mr. Zaychenko's home in
16 the Richmond?

17 **A** Yes, we did. With other police officers, yes, we did.

18 **Q** What was your purpose in going out there?

19 **A** To investigate Mr. Zaychenko as a methamphetamine dealer.

20 **Q** And did you conduct a search of the home in which
21 Mr. Zaychenko was living at the time?

22 **A** Yes.

23 **Q** Did you find Mr. Zaychenko there?

24 **A** Yes.

25 **Q** Describe for the jury how that search took place.

1 **A** We -- we entered his residence. We -- his girlfriend was
2 on felony probation with a search condition. She was also a
3 resident there. And so we entered, basically using her search
4 condition.

5 We -- once we entered the residence, there was quite a bit
6 of narcotics all over the place. Coin baggies with small
7 plastic baggies with what looked like methamphetamine to us,
8 all kind of pills, paraphernalia, as well as Mr. Zaychenko, who
9 was sleeping.

10 **Q** Did you seize that drug evidence?

11 **A** Yes.

12 **Q** And did you arrest Mr. Zaychenko?

13 **A** Yes.

14 **Q** And during that search, did you take any property that
15 belonged to somebody in the house for your own use, rather than
16 to book into evidence?

17 **A** Yes.

18 **Q** What did you take?

19 **A** I took an MP3 stereo, a speaker. A Bose sound dock.

20 **Q** Did you observe Mr. Robles take anything for his own
21 personal use?

22 **A** Yes.

23 **Q** What did you observe Mr. Robles take?

24 **A** I can recall him taking a license plate cover off of one
25 of the cars of Mr. Zaychenko. And it was a CHP charitable

1 foundation -- the 11-99 Foundation -- license plate cover.

2 **Q** And did you have an understanding at the time as to what
3 the -- what the import? Why would he want one of those?

4 **A** It may, in fact, be urban legend, but there was a belief
5 that to pay -- it's not a small amount of money. It's
6 probably, in fact, several thousand dollars that you donate to
7 this foundation that, in fact, earns you that license plate
8 cover.

9 But the belief was that if you had that license plate
10 cover on your car, that the CHP would give you leniency in any
11 kind of violations for speeding or something like that, because
12 you had in fact donated to their charity.

13 **Q** You mentioned that when you went out there to
14 Mr. Zaychenko's residence, you did so based on a tip that you
15 would find some significant drug evidence there. Is that
16 correct?

17 **A** Yes.

18 **Q** And then you ultimately stole some property.

19 **A** Yes.

20 **Q** Is that scenario that you just described relatively
21 typical of the two-, three-a-week scenarios that you described
22 earlier this morning?

23 **A** That would be typical. The -- what would make up the
24 difference would be just information that we cultivated on our
25 own. But either we generated the information on our own, or,

1 or through some sort of tip or direction from some informant.

2 **Q** If I could direct your attention, let me ask you --

3 **MR. HEMANN:** Would you put up, Ms. Lane, Exhibit 272,
4 which is at Tab 8 of the binder.

5 (Document displayed)

6 **BY MR. HEMANN:**

7 **Q** Do you recognize that building, Mr. Vargas?

8 **A** Yes.

9 **Q** How do you recognize it?

10 **A** I recognize it as one of the many SRO hotels in the
11 Mission District.

12 **Q** Did you ever steal anything from that, from a room in that
13 building?

14 **A** Yes.

15 **Q** And do you remember that theft?

16 **A** Yes.

17 **Q** Who participated in that theft with you?

18 **A** It was myself, Mr. Robles and Mr. Furminger.

19 **Q** And how did you come to be in the -- as you can see from
20 the -- the photograph, the Hotel Sunrise?

21 **A** Um, again, this was a tip from someone. I just can't
22 recall who it was. Because when we went to the hotel, we had
23 our target in mind. We weren't just doing a simple registry
24 check. We were looking for somebody specifically.

25 **Q** You went in. When you say "typical registry check," what

1 do you mean?

2 **A** There were times -- I may have mentioned this briefly
3 yesterday -- that we would check the registration cards of
4 these SROs to make sure that they were filled completely and
5 validly, and also that the person registered the room had left
6 some sort of verifiable identification. This is, again, only
7 if there weren't other assignments to take our attention.

8 Basically if we had the free time available, this was
9 something we could do to look -- look for wanted subjects, any
10 of that sort of thing.

11 **Q** Now, is your recollection you were actually looking for a
12 particular person on this occasion?

13 **A** My recollection is that was not a registry check. We
14 were, in fact, looking for a specific person.

15 **Q** And did you find the person that you were looking for?

16 **A** Yes.

17 **Q** How did you find the person on that occasion at the Hotel
18 Sunrise?

19 **A** On that occasion, what we found his registration card. We
20 found him registered to a specific room.

21 **Q** Did you do something with that registration card in order
22 to gain entry to the room?

23 **A** Yes.

24 **Q** What did you do?

25 **A** We checked the criminal history of the individual, and we

1 ran his name through some of the criminal databases, basically
2 checking for wants and warrants.

3 There was additional information on the card, providing a
4 Social Security number. Well, you can run the name to check
5 for wants, but you can also run the Social Security number on
6 its own and check for any warrants associated with that Social
7 Security number.

8 **Q** And did you do that with regard to the Social Security
9 number?

10 **A** Yes.

11 **Q** What do you recall that you found?

12 **A** I recall that we -- that the Social Security number came
13 back to somebody that was wanted. Somebody who had a warrant,
14 potential warrant for their arrest.

15 **Q** Based on that, did you decide to go into the room that you
16 were -- that you had identified associated with that
17 registration card?

18 **A** Yes.

19 **Q** Now, typically, Mr. Vargas, do you need, when you have
20 somebody who you have identified as being subject to an arrest
21 warrant, and they are inside a room, do you need some sort of
22 paperwork in order to get into that room?

23 **A** Yes.

24 **Q** What sort of paperwork do you need?

25 **A** A search warrant.

1 Q Did you go about getting a search warrant to go into the
2 room of that person?

3 A No.

4 Q How did you get in?

5 A I recall us having a key to the room. And so, and then
6 using that key to open up the door.

7 Q And from whom did you get the key?

8 A From the manager there at the hotel.

9 Q When you went into that room, who was with you?

10 A It was myself, Officer Robles, Mr. Robles, Mr. Furminger
11 and I believe a fourth officer.

12 Q Do you remember who that fourth officer was?

13 A I believe it was Zachos, Z-A-C-H-O-S.

14 Q How big was the room?

15 A It's pretty small.

16 Q Was it a typical SRO?

17 A I would say of a slightly higher quality than the typical
18 SROs. It was cleaner. It wasn't on Mission Street. Those
19 tend to be some of the -- the less-nice ones. This one even
20 had a half-bath inside of it. This was on the nicer side of
21 things.

22 Q When you went into that room, what did you encounter?

23 A We found the person that we were looking for. When we
24 opened the door, he was on his bed, naked. He jumped up and
25 tried to shut the door on us. Tried to close us, you know, out

1 of the door.

2 **Q** Can you describe what the room was like?

3 **A** Very small, disheveled, you know, kind of a mess. And, as
4 I said, he was laying on his bed. It was a mess. He had his
5 laptop on.

6 And as I recall, there were quite a bit of drugs all over
7 the place. You know, on -- beside him, on the dresser, in
8 other locations again these are coin baggies of
9 methamphetamine, scattered around the room.

10 **Q** And had you gone in with the belief that this individual
11 was a methamphetamine dealer?

12 **A** Yes.

13 **Q** And was the room typical of some kind of mid-level
14 methamphetamine dealer?

15 **A** Yes.

16 **Q** Once you got into the room, what did you do with the
17 inhabitant? And by the way, do you remember as you sit here
18 today, what his name was?

19 **A** Yeah. I believe his last name was Byrd.

20 **Q** What did you do with Mr. Byrd, having encountered him?

21 **A** He -- he had struggled with us a bit. As I said, he had
22 tried to shut the door on us. I believe he even tried to shut
23 the door on my foot, and I put my foot inside, you know,
24 between the door and the jamb so he couldn't close it.

25 So we had to kind of force our way in, so we were already

1 struggling with him a little bit. So, he was really hostile,
2 obviously really mad, and now arrested with a lot of drugs.
3 So, you know, struggling a bit with us. So he was handcuffed.

4 **Q** What did you do?

5 **A** We handcuffed him. And of course, now we had him
6 handcuffed and naked. And so, he had to use the bathroom, and
7 I remember taking him into his little bathroom and allowing him
8 to pee, and then trying to get him dressed, putting some
9 clothes on him, that sort of thing.

10 **Q** And did you assist in that regard?

11 **A** Yes.

12 **Q** When you get into the room, what was your, in particular,
13 responsibility? You, Officer Vargas.

14 **A** Specifically, me, I dealt with -- with Mr. Byrd.

15 **Q** So, was it you who got him dressed and got him out of the
16 room?

17 **A** Yes.

18 **Q** What were Mr. Furminger and Mr. Robles doing while you
19 were doing that?

20 **A** While I dealt with Mr. Byrd, they were searching. Looking
21 for evidence, just starting the search of the room.

22 **Q** And do you remember anything in particular that
23 Mr. Furminger was doing?

24 **A** He was dealing with the laptop that Mr. Byrd was looking
25 at.

1 Q When you say "dealing with" it, what do you mean?

2 A When Mr. Furminger and I walked in, and dealt with
3 Mr. Byrd, there was a video playing on the laptop. And, it was
4 of a potentially illegal nature to possess a video of that
5 sort.

6 Q It looked like a kid.

7 A It looked like --

8 Q Or, a person under the age of 18.

9 A It looked like a person under the age of 18, involved in
10 an illegal sex act.

11 Q And so Mr. Furminger was collecting evidence regarding
12 that computer.

13 A Yeah. Once -- as I recall it, once we -- I don't know if
14 it was something Mr. Byrd did or in fact something we did, but
15 we lost the video. The video stopped playing, it had dropped
16 out.

17 And so I think we were -- we knew the computer was
18 unlocked and open so I think we were trying to pull that video
19 back up to see if we had seen what we had actually seen.

20 Q When you say "we" were doing that, who do you mean, "we"?

21 A I mean Mr. Furminger and myself. This was after, you
22 know, I am trying to deal with it and then me help -- assisting
23 him later, once Mr. Byrd had left the residence.

24 Q What was Mr. Robles doing?

25 A He was searching the room.

1 Q Searching other places in the room?

2 A Yes. I mean, it's a small room, so basically, you know,
3 there was, you know, drawers and cabinets and things and
4 clothes and boxes, and looking through all of that sort of
5 stuff.

6 Q Did any of the officers present -- what was Officer Zachos
7 doing, if you remember?

8 A I don't recall him being there through much of the search
9 afterwards, and so my belief is that he went back to the
10 station with Mr. Byrd. Because I just don't recall him being
11 there towards the end of the search.

12 Q Did -- during the search, did any of the three officers
13 who you do remember being there, locate any money?

14 A Yes.

15 Q What, who located money?

16 A I believe that was Officer Robles.

17 Q How do you know at a that?

18 A Because shortly thereafter, we went to another location,
19 and Mr. Robles had all that money and then divided it up
20 between myself and Mr. Furminger.

21 Q Did Mr. Robles show you money during the search, itself?

22 A Yes, I believe so. I believe he kind of said, you know,
23 showed that there was a pretty sizable amount of cash.

24 Q You are gesturing with your hands; what are you doing?

25 A I'm kind of showing basically a thickness (Indicating) and

1 it would be the thickness of the bills that were together. And
2 I'm gesturing a couple of inches.

3 Q Was it like a roll or a stack?

4 A I believe, a stack.

5 Q You left the scene of the search. You left the hotel room
6 at some point, correct?

7 A Yes.

8 Q In addition to the money and the drugs, did you seize
9 anything in particular that you remember?

10 A I believe we did seize that laptop, and, and basically
11 kind of forwarded that through channels with an attempt, with a
12 hope that who -- our techs, could in, fact locate the video
13 that we had seen.

14 Q Your techs?

15 A Computer techs, basically they would start scouring
16 through the laptop and see if there was in fact anything
17 illegal in term of any videos or anything like that, or images.

18 Q After you left Mr. Byrd's hotel room, where did you and
19 Mr. Robles and Mr. Furminger go?

20 A We went to a cafe on Mission Street.

21 Q Do you remember the name of the cafe?

22 A I do.

23 Q What was the name?

24 A It was -- it's called Cafe La Taza, L-A, T-A-Z-A.

25 Q Where is it?

1 **A** It is on Mission Street. It's probably between 21st and
2 22nd, right within that general vicinity.

3 **Q** Did you sit down in the cafe with Mr. Robles and
4 Mr. Furminger?

5 **A** Yes.

6 **Q** At a table?

7 **A** Yes.

8 **Q** And did the money then come up again?

9 **A** Well, at a certain point, Mr. Robles got up from the table
10 and went to the bathroom on his own. And, he came back out,
11 and as we were sitting there at the table, he kind of bumped my
12 leg under the table with his hand, and in his hand was -- was
13 an amount of cash that he gave to me.

14 And I saw that he was doing the same thing to
15 Mr. Furminger.

16 **Q** How much cash did he give you?

17 **A** I believe it was close to \$2,000.

18 **Q** Did you discuss it with Mr. Furminger and Mr. Robles,
19 while you were sitting in the cafe?

20 **A** No.

21 **Q** Why not?

22 **A** I don't think it was -- we kind of did this, I mean, even
23 the act of doing it under the table, we weren't trying to be
24 public about it. We were trying to be discreet about it.

25 So I think in -- in not talking about it, that was kind of

1 another level of that discretion. Where, yes, we're doing
2 this, and here it is, but we're not -- we are not going to
3 discuss it.

4 **Q** In 2009, when you worked as a partner with Mr. Robles,
5 could you describe, sort of, what the nature of your friendship
6 was or the nature of your relationship?

7 **A** Um, we were very -- we were friendly. You know, I
8 considered him a friend. We didn't go out a lot socially,
9 outside of work. But, yeah, I considered him a friend. I
10 considered it a friend relationship.

11 And certainly because we were then involved in -- in not
12 only doing a lot of quality police work, a lot -- doing a lot
13 of police work that we, in fact, tainted by our theft, so we
14 kind of had that bond with that as well.

15 **Q** How would you describe your relationship with
16 Mr. Furminger?

17 **A** I -- I considered it friendly as well, but probably not as
18 close as I was with Mr. Robles because Mr. Robles and I rode
19 with each other every day, we spent hours and hours together.
20 I didn't spend nearly the amount of time with Mr. Furminger.
21 And I hadn't really known him until he was assigned to Mission
22 Station.

23 **Q** Based on what you were able to observe, was Mr. Furminger
24 and Mr. Robles -- was the character of their relationship
25 different than the character of your relationship with each of

1 them?

2 **A** Yes.

3 **Q** How so?

4 **A** They -- theirs was a closer relationship. I believe they
5 went out much more socially than I did with them.

6 **Q** Why do you believe that?

7 **A** Several reasons. They lived a lot closer together than I
8 did from them. And, they were both, you know, married with
9 kids so they had that sort of similarity as well. I was single
10 and then started to date somebody, and so I was kind of
11 involved in a separate thing. And -- those sort of reasons.

12 **Q** After the -- the incident with Mr. Byrd, after the arrest
13 and taking the money, your conversation at that cafe, did you
14 go back to Mission Station and write a police report?

15 **A** Yes.

16 **Q** Was that your normal practice after one of these kind of
17 -- I mean, I guess after a law enforcement event, would you go
18 write a report?

19 **A** Yes.

20 **Q** And, as between you and Mr. Robles, was one of you a more
21 prolific report writer?

22 **A** Yes.

23 **Q** Who was that?

24 **A** That was me.

25 **Q** Why is that?

1 **A** It was a division of labor. And, and I didn't mind
2 writing the police reports. And I thought I wrote a pretty
3 good police report. And so I didn't mind doing that. And it
4 was --

5 **Q** Who between you was senior?

6 **A** Mr. Robles.

7 **Q** By how many years?

8 **A** By several years. More than five, maybe even more than
9 that. I don't know the exact amount, but many years senior to
10 me.

11 **Q** Did that have to do -- did that influence the division of
12 labor in terms of the report writing?

13 **A** Somewhat, but it just -- you know, I didn't mind it. I
14 enjoyed writing the reports. I enjoyed describing the
15 investigation and doing that sort of thing. And so that was
16 kind of my -- um, as we kind of worked more and more together
17 and got into a flow of what each other did, that kind of, more
18 often than not, became my task as how we divided things up.

19 **MR. HEMANN:** If you could put up 252, please.

20 (Document displayed)

21 **BY MR. HEMANN:**

22 **Q** Is this, Mr. Vargas, the report that you wrote -- and I
23 put the whole report in front of you -- the report that you
24 wrote regarding the incident with Mr. Byrd?

25 (Witness examines document)

1 **A** Yes.

2 **Q** And did you write it the day of the events that took
3 place?

4 **A** Yes.

5 **Q** Are portions of that report false, Mr. Vargas?

6 (Witness examines document)

7 **A** Yes.

8 **Q** In what respect?

9 (Witness examines document)

10 **A** Well, the first portion that I would say is false is the
11 description of the entry of the room. And as I recall, we had
12 a key. So that, that portion where we describe him opening up
13 the door, that, that's incorrect. And --

14 **Q** If you could look at -- tell us what page that's on, down
15 at the bottom.

16 **A** On your numbering that would be Page 4. It would be the
17 second paragraph.

18 (Document displayed)

19 **A** Probably the fourth to fifth line.

20 **Q** Are there other portions of that report that are false?

21 (Witness examines document)

22 **A** Yes.

23 (Off-the-Record discussion between counsel)

24 **MR. HEMANN:** I'm sorry; that is Tab 8 we are looking
25 at.

1 **BY MR. HEMANN:**

2 **Q** Are there other portions of that report that are false?

3 **A** Yes.

4 **Q** What other portions?

5 **A** Well, the evidence page is wrong, in that it's lacking the
6 money that was seized.

7 **Q** So you omitted from the report the fact that you had taken
8 some amount of money from the residence?

9 **A** Yes.

10 **Q** And did you know the total amount of money, or did you
11 have a belief as to the total amount of money that was taken
12 when you wrote the report?

13 **A** Yes.

14 **Q** What was your belief?

15 **A** Well, based on the portion of money I received, which was,
16 as I said, about \$2,000, my belief was the total of it was
17 \$6,000, meaning that we had each gotten one third.

18 **Q** And this may seem like an absurdly obvious question, but
19 why didn't you put that in the record?

20 **A** Well, because we had stolen the money.

21 **Q** For the various incidents in which you took money and
22 prepared a report, took and kept for yourself and prepared a
23 report, would all of those police reports be false by omission?

24 **A** Yes.

25 **Q** Did Mr. Robles, on occasion, prepare police reports that

1 you had an opportunity to see, that were false by omission?

2 **A** In the same manner, yes.

3 **Q** And did Mr. Furminger, on occasion, approve police reports
4 of that nature?

5 **A** Yes.

6 **Q** Now, on this occasion, did he?

7 **A** No. He did not.

8 **Q** Who approved this one?

9 **A** This is another sergeant who was assigned to Mission
10 Station. Would you like his name?

11 **Q** Sure, if you can make it out.

12 **A** It looks like Sergeant Bueno, B-U-E-N-O.

13 **Q** And did Sergeant Bueno have any knowledge of the fact that
14 you had taken money from that hotel room?

15 **A** None, whatsoever.

16 **Q** After the incident at the Sunrise Hotel with Mr. Byrd, did
17 you participate in a theft at a self-storage unit out in the
18 far western part of San Francisco?

19 **A** Yes.

20 **MR. HEMANN:** And Your Honor, we are going to look at
21 Exhibit 10. Sorry. And -- or Tab 10.

22 If you can put up, Ms. Lane, Exhibit 274?

23 (Document displayed)

24 **BY MR. HEMANN:**

25 **Q** Is this the self-storage unit that you recall?

1 **A** Yes.

2 **Q** What led you to this self-storage unit?

3 **A** Again, this is another tip from another informant. And I
4 just don't recall who it was. It was none of our typical or
5 more frequent informants.

6 **Q** It was not Cesar Hernandez?

7 **A** No.

8 **Q** It was not the Shah?

9 **A** No.

10 **Q** What was the nature of the illegal activity that you were
11 looking into?

12 **A** After getting this information, we were told basically
13 that there was a narcotics trafficker specifically a heroin
14 dealer of some note, a pretty sizable heroin dealer, that was,
15 in fact, living in the storage space.

16 And we came later to find out that there were several
17 people who lived in this storage space as their residence.
18 They plug in, you know, a microwave and a light and just move
19 into a little closet-sized storage space, and live there month
20 to month.

21 **Q** When you said "we," who was working on this the
22 investigation, if you will?

23 **A** Myself, Mr. Robles and Mr. Furminger.

24 **Q** Based on the information that you received -- first of
25 all, do you recall whether the informant was able to identify

1 this particular self-storage facility?

2 **A** Yes. Specifically -- the specific facility, as well as
3 the person we were looking for, the actual target, himself.

4 **Q** And, when you say "himself," what -- a man?

5 **A** Yes.

6 **Q** What do you remember about him?

7 **A** I remember his -- his last name and his nickname.

8 **Q** What were those?

9 **A** I think his last name was -- was it Burgess Crosby? I
10 know his nickname for sure. His nickname was "Indio."

11 **Q** Indio.

12 **A** Yes.

13 **Q** Once you got this information, did you and your fellow
14 officers conduct some further investigation with regard to
15 the -- the self-storage site?

16 **A** Yes.

17 **Q** What did you do?

18 **A** We had gone there at least once prior to the arrest, maybe
19 even twice prior to the arrest. Attempting to find out the
20 location and hoping to find Indio inside the storage space.

21 And I recall us talking to the manager of the storage
22 space and, you know, he just -- he was a bit transient. He
23 would come in and out, and so --

24 **Q** "He" being --

25 **A** "He" being Indio.

1 Q Not the manager.

2 A No, he, being Indio, would come in and out of the place.

3 So we would arrive there and maybe sit there two or three

4 hours, hoping that Indio would show up and arrive. And he just

5 wouldn't.

6 Q One day, were you able to put Indio at the self-storage

7 place?

8 A Yes.

9 Q How did that come about?

10 A We -- "we" meaning myself and Mr. Robles -- left our

11 contact information with the manager of the storage space, and

12 basically said, "Call me if Indio arrives and we'll go out

13 there, because we're going to arrest Indio."

14 Q And did you get a call at some point in time?

15 A Yes.

16 Q Did you go out there?

17 A Yes.

18 Q Who went out there with you?

19 A Two other police officers.

20 Q Who and who, if you remember?

21 A Officers, I believe, Greiner, G-R-E-I-N-E-R and Kenney,

22 K-E-N-N-E-Y.

23 Q Do you recall whether Mr. Robles initially went out with

24 you?

25 A Mr. Robles was assigned to work with me that day, and

1 working with me that day, but did not respond out there.

2 **Q** So you went out there. And what happened when you got
3 there?

4 **A** As I recall, when we got there, the manager called and
5 said Indio as well as his girlfriend had arrived there, but
6 when we in fact -- you know, we're driving from the Mission
7 District, and this is way out in outermost 19th Avenue, almost
8 to the Daly City border.

9 And so, in that time I recall Indio not being there. He'd
10 left. But as we were driving around the location, this is the
11 back side of the storage space. This (Indicating) is not 19th
12 Avenue. 19th Avenue would be on the complete other side of
13 this building.

14 As we were driving around the location, we saw a car that
15 belonged to Indio, and we saw a woman, his -- who we later
16 found out is his girlfriend standing outside, and the door
17 opened. The storage space door opened.

18 **Q** Now, as you are going through these actions, these
19 surveillance actions, were you keeping in touch with either
20 Mr. Furminger or Mr. Robles?

21 **A** Yes.

22 **Q** How so?

23 **A** With -- via text message.

24 **Q** Did you talk to them on the phone, too?

25 **A** I may have, yes.

1 Q At some point in time, do you encounter Indio?

2 A Yes.

3 Q And how did that come about?

4 A Well, we walked into -- these doors on the side here, some
5 of these doors open directly to storage spaces. Some of them
6 open up into hallways. And once you enter the hallway, the
7 individual storage spaces are connected to that hallway.

8 In walking into one of those hallways, we -- Indio was
9 there, we saw Indio there with his door to his particular
10 storage space open.

11 Q What did you when you encountered Indio?

12 A We arrested him.

13 Q You and the other two officers?

14 A Yes.

15 Q Did you contact -- at about the time of the arrest or in
16 anticipation of the arrest, did you contact Mr. Robles or
17 Mr. Furminger?

18 A Yes.

19 Q Why did you do that?

20 A Well, I let them know that I had grabbed Indio, as well as
21 his girlfriend. And also that there was cash involved. And
22 so, I had found money, and said, "Hey, get down here."

23 Q Where did you find money?

24 A I believe on -- there may have been some inside a storage
25 space, but I believe it was on Indio, himself, on his person.

1 Q What did you do with the money?

2 A I put it aside. I kept it in my pocket initially, I
3 believe. Initially I had it in my pocket, but later put it
4 aside.

5 Q Put it aside where?

6 A Inside his storage space.

7 Q Did Mr. Robles and/or Mr. Furminger come out to the
8 self-storage unit?

9 A Yes.

10 Q Did they come together or separate?

11 A Separately.

12 Q How do you know that?

13 A Because they came in different cars.

14 Q When they got there, what did each of them do?

15 A Um, they came to me, obviously, because I was the person
16 that had recovered the money. And, what I -- I do recall
17 taking the money out of my pocket, and then putting it on the
18 ground, away from the hallway, and more importantly at that
19 point, away from the other police officers that were unaware of
20 what I was doing.

21 And I kind of pulled Ian, Mr. Furminger, as well as
22 Mr. Robles, in with me and said "Here's the money." And I put
23 it down on the ground inside the storage space.

24 Q You mentioned earlier that Mr. Robles was on duty that day
25 and working with you?

1 **A** Yes.

2 **Q** But didn't go out with you to the storage spot.

3 **A** No.

4 **Q** Do you recall whether Mr. Furminger was on duty that day?

5 **A** I do not believe he was on duty.

6 **Q** Where do you believe he was when you were contacting him
7 earlier in the day?

8 **A** Probably home.

9 **Q** It was not at Mission Police Station?

10 **A** Not at Mission Station, no.

11 **Q** At some point in time, after Mr. Furminger arrived, did he
12 do something with regard to that money?

13 **A** Yes.

14 **Q** What did he do?

15 **A** Well, when I put the money down on the ground, he grabbed
16 it, and took it all, and took it with him.

17 **Q** Afterwards, what happened? After that happened, is Indio
18 still present? Not in the storage locker, but --

19 **A** No. If he wasn't, like, out here on the sidewalk area, he
20 in fact had already been transferred back along with his gal
21 back to Mission Station, where we would subsequently book them.

22 **Q** And were they subsequently booked?

23 **A** Yes.

24 **Q** What became of the money that Mr. Furminger gathered up in
25 the middle of the room?

1 **A** At a later point, Mr. Furminger gave myself and Mr. Robles
2 portions of that money.

3 **Q** Do you recall where that exchange took place?

4 **A** I don't. Sorry.

5 **Q** Do you recall how much money you received?

6 **A** I recall it being a few hundred dollars. No more than
7 about 3- or 400.

8 **Q** And how do you know that was money from the self-storage
9 facility?

10 **A** I don't. Only that that was -- you know, he had taken --
11 that money that I had recovered and put down on the ground, he
12 had then removed, and then was later giving me cash.

13 **Q** We talked earlier about Cesar Hernandez.

14 Did you continue to talk about doing both legitimate and
15 illegitimate things with Cesar Hernandez in the latter part of
16 2009 and into 2010?

17 **A** Yes.

18 **Q** Do you recall conversations with Mr. Hernandez about an
19 auto body shop in the Bayview area of San Francisco?

20 **A** Yes.

21 **Q** What do you recall about those conversations?

22 (Document taken off display)

23 **A** Cesar was a wealth of knowledge; he knew quite a lot of
24 drug traffickers. And so in talking with him and talking about
25 who he knew, he described to us that there was an auto body

1 shop that trafficked in pretty sizable amounts of cocaine, that
2 they had a very, very sophisticated technique on how they
3 brought in the cocaine and then in turn shipped out the money.
4 And he described to us how that worked, as well as some of the
5 people involved in it.

6 **Q** Based upon the description that he gave, did you and other
7 officers talk about a plan to conduct some sort of law
8 enforcement operation with regard to that auto body shop?

9 **A** Yes.

10 **Q** Who did you talk about that with?

11 **A** I know myself and Mr. Robles, with Cesar, actually went
12 out to that location, at least once, maybe a couple of times.
13 And just kind of watched it, and took a look at it, and see
14 kind of what it was about. We even walked around it a little
15 bit.

16 I recall we even sent Cesar in to make contact with the
17 person. Just kind of as a friendly hello, not trying to
18 arrange a drug transaction or anything, but just to kind of see
19 that the information that he had was -- wasn't stale, it wasn't
20 too old, that in fact what he thought was occurring was still
21 going on.

22 **Q** Was a plan ever developed to steal money from that auto
23 body shop?

24 **A** Not that I'm aware of, no.

25 **Q** Do you remember going out with Cesar, Mr. Hernandez, one

1 evening at around that time where there was drinking involved?

2 **A** Yes.

3 **Q** What did you remember about that?

4 **A** What I remember is that a group of guys, we had gone out
5 in that evening, and Cesar was not with us. We had been out
6 drinking for a while. And then, at one point Cesar joined us
7 in the midst of our evening for a little while.

8 **Q** Do you know how he came to join you?

9 **A** I believe he came by taxi.

10 **Q** Did he stay long?

11 **A** Uh, no.

12 **Q** Do you remember whether he spoke to Mr. Robles that
13 evening when you were out drinking?

14 **A** Oh, sure, absolutely.

15 **Q** Do you remember them talking about the Frank's -- or the
16 auto body plan?

17 **A** I don't recall it, no.

18 **Q** Did you guys ever hit or -- either legitimately or
19 illegitimately, the auto body shop?

20 **A** No.

21 **Q** After Mr. Robles went to work with the motorcycle group,
22 did you continue working with him in any capacity?

23 **A** With Cesar? Or with --

24 **Q** No, with Mr. Robles.

25 **A** No. Not that -- no. I don't believe so.

1 Q And at some point in time did you stop working with
2 Mr. Furminger as well?

3 A Yes. Yes, I believe so. I mean, he was a supervisor, and
4 so in that sense, because of his rank he kind of works with all
5 the officers that are on duty at that time underneath of him.
6 But, but directly, I don't believe so -- yeah, we weren't
7 working together directly.

8 Q Did you work with him less after Mr. Robles left Mission
9 Station?

10 A Yes.

11 Q Why is that?

12 A Um, well, partially there was a transition of his
13 assignment. He -- he worked with the plainclothes units less
14 and less.

15 And at one point, I believe -- and I'm unsure of the exact
16 time -- at one point he was in an accident, a vehicle accident,
17 so he was not there for a while then as well.

18 Q But did you continue stealing money on your own when you
19 would do searches or arrests and things like that?

20 A Yes.

21 Q Did you continue working with Cesar Hernandez on occasion,
22 and stealing things and sharing those things with
23 Mr. Hernandez?

24 A Yes.

25 MR. HEMANN: Ms. Lane, if you could please put up

1 Exhibit 276.

2 (Document displayed)

3 **BY MR. HEMANN:**

4 **Q** Do you recognize this building, Mr. Vargas?

5 **A** Yes.

6 (Off-the-Record discussion between counsel)

7 **MR. HEMANN:** Oh, Tab 11. Thank you. Thanks, Rodney.

8 **BY MR. HEMANN:**

9 **Q** How do you recognize this building?

10 **A** I recognize it just as one of the numerous hotels we did
11 some sort of operation or arrest in.

12 **Q** When you say "we," who do you mean at this point?

13 **A** At this point, me -- "we" being plainclothes police
14 officers. Me, specifically, but at this point I was working
15 with other plainclothes police officers.

16 **Q** And did you conduct a search in this building based on
17 information provided to you by Cesar Hernandez?

18 **A** Yes.

19 **Q** Did you steal anything from this building and share it
20 with -- keep it for yourself, I guess, number one?

21 **A** In terms of keeping it for myself, I don't recall if I
22 did, on this particular -- in this particular place.

23 **Q** Would it surprise you if you did?

24 **A** No.

25 **Q** Do you recall taking anything from this apartment

1 building, and sharing it with Mr. Hernandez?

2 **A** Yes.

3 **Q** What do you remember sharing with Mr. Hernandez?

4 **A** A laptop computer.

5 **Q** Do you remember what kind of laptop it was?

6 **A** I believe it was a Toshiba.

7 **Q** At some point in time, did you stop doing work with Cesar
8 Hernandez?

9 **A** Yes.

10 **Q** And what led you to stop doing work with Cesar Hernandez?

11 **A** I ceased being a plainclothes police officer, which pretty
12 much negated my need to have any sort of informant.

13 **Q** Where was Cesar at this point in time? Do you know where
14 he was living?

15 **A** Yes.

16 **Q** Where was he living?

17 **A** He was living in a homeless shelter in the south-of-Market
18 area.

19 **Q** In terms of his usefulness to you as an informant, either
20 for legitimate or illegitimate purposes, did his living in a
21 homeless shelter have an impact on that?

22 **A** Yes, as well as him seeking legal employment, because he
23 wasn't running around in those illegal circles any more. He
24 just didn't have the -- the most current information. And so
25 he slowly but surely became less and less useful as an

1 informant.

2 **Q** And as that transition occurred, were there occasions
3 where you spent time with Cesar on I guess what I would
4 describe as a social basis?

5 **A** Yes.

6 **Q** Can you describe that relationship -- how that
7 relationship -- as he moved into, sort of, legitimate
8 employment and lived in the homeless shelter, how did your
9 relationship with him evolve?

10 **A** Cesar, to me, was just a likable guy. You know, we used
11 to hang out a lot. He would come to the station a lot.

12 One of the reasons why he would come to the station a lot
13 is because I had a soft spot for him, he knew he could ask me
14 for some money, for food, and I would provide it for him. He
15 would always, you know, go by, "Oh, Mr. Vargas, I need money
16 for a burrito." And I would provide him some money to get
17 something to eat.

18 So, we would hang out a lot. And at times I even brought
19 him to my residence to help me move, move some stuff, both in
20 my house and out of my house into a storage space. And I used
21 Cesar, and, you know, paid him by the hour, and bought him
22 lunch.

23 And so, I felt comfortable enough with him to bring him to
24 my own house.

25 **Q** At some point in time, did you, Mr. Vargas, stop engaging

1 in the kind of activity -- the kind of criminal activity that
2 you have described today?

3 **A** Yes.

4 **Q** What caused you to -- when, and what was it that caused
5 you to stop?

6 **A** Well, I got removed from -- I got placed on a desk
7 assignment, so I was no longer a plainclothes police officer.
8 So, everything immediately halted at that point.

9 **Q** And, did -- were you placed on a desk assignment in part
10 as a result of this -- the conduct that led to the charges
11 here?

12 **A** Initially, what led to that was the Public Defender in
13 San Francisco releasing videos of plainclothes police officers
14 going in and out of the SRO hotels. So that was what got many
15 of the plainclothes police officers, including myself,
16 transferred out of that assignment.

17 **Q** And do you appear in a couple of those videos?

18 **A** Yes, I do.

19 **Q** And on those occasions in those videos, those, in
20 particular, that the Public Defender's Office released, were
21 you stealing anything on those occasions?

22 **A** On those occasions, no. I wasn't.

23 **Q** But, you were stealing things on many occasions that were
24 not caught on videotape?

25 **A** On numerous other occasions; but on those particular ones

1 that are shown in the videos, no, I was not.

2 **MR. HEMANN:** Your Honor, this would be a good breaking
3 point.

4 **THE COURT:** Okay.

5 **MR. HEMANN:** I would ask -- I have a couple of
6 questions to follow up on. I think I might be done, but I
7 would just like to check my notes after lunch.

8 **THE COURT:** Sure.

9 **MR. HEMANN:** Thank you.

10 **THE COURT:** Ladies and gentlemen, we are going take
11 recess now until 1:00.

12 Remember the admonition given to you: Don't discuss the
13 case, allow anyone to discuss it with you, form or express any
14 opinion.

15 Back at 1:00.

16 **MR. HEMANN:** Thank you, Your Honor.

17 (Jury excused)

18 (The following proceedings were held outside of the
19 presence of the Jury)

20 **THE COURT:** Okay.

21 **MR. HEMANN:** Thank you, Your Honor.

22 **THE COURT:** Yeah.

23 (Recess taken from 11:55 a.m. to 1:02 p.m.)

24 **THE COURT:** Please be seated.

25 Let the record reflect that all jurors are present, the

1 parties are present.

2 You may proceed.

3 **MR. HEMANN:** Your Honor, we have no further questions
4 for Mr. Vargas at this time.

5 **THE COURT:** Okay. Thank you.

6 Mr. Getz.

7 **CROSS EXAMINATION**

8 **BY MR. GETZ:**

9 **Q.** Good afternoon.

10 **A.** Good afternoon, Counselor.

11 **Q.** I heard you say that you pled guilty. When is your
12 sentencing date?

13 **A.** Uhm, I don't believe that's been determined yet.

14 **Q.** Why not?

15 **A.** Uhm, I don't know.

16 **Q.** You don't know?

17 **A.** No.

18 **Q.** Didn't you sign a plea agreement?

19 **A.** Yes.

20 **Q.** And did your plea agreement say something about when the
21 sentencing date would be?

22 **A.** I don't know if it had a specific date on it.

23 (Government and defense counsel confer off the record.)

24 **MR. GETZ:** Your Honor, may I approach --

25 **THE COURT:** Sure.

1 **MR. GETZ:** -- with what's going to be marked?

2 (Handing document to witness.)

3 **BY MR. GETZ:**

4 **Q.** Mr. Vargas, I have handed you a copy of your plea
5 agreement. I would ask you to read paragraph 10, to yourself,
6 please, and let me know when you've finished.

7 **A.** (Witness reading.)

8 Okay.

9 **Q.** Have you had a chance to read 10, subsection E?

10 **A.** Yes.

11 **Q.** It says, "I will request continuances of my sentencing
12 date as necessary until my cooperation is completed"; correct?

13 **A.** Yes.

14 **Q.** So your sentencing date is going to be when your
15 cooperation is completed; right?

16 **A.** Yes.

17 **Q.** Why is that? Why don't we just sentence you now? What
18 are we waiting for?

19 **A.** I believe we're waiting for this trial to complete.

20 **Q.** We're waiting for this trial to complete before your
21 sentence? What's the connection there?

22 **A.** Because I'm a witness during this trial.

23 **Q.** And?

24 **A.** And I'm cooperating.

25 **Q.** And what does that mean in connection with your

1 sentencing, that you're cooperating?

2 **A.** That I'm cooperating as a witness and, in fact, it may
3 provide leniency to me in terms of sentencing.

4 **Q.** All right. So the answer to the original question is, the
5 reason I haven't gotten a sentencing date is because I'm trying
6 to get leniency here with my testimony; correct?

7 **A.** That's part of the answer, yes.

8 **Q.** Well, you didn't say that though, did you?

9 **A.** No.

10 **Q.** All right. So let's talk about this process by which you
11 get leniency.

12 What's your understanding of how you get leniency when
13 you're sentenced?

14 **A.** The process, with my understanding, is that the
15 U.S. Attorney's Office has to judge my level of cooperation as
16 well as how forthcoming I am with them, how truthful I am with
17 them. And then, ultimately, they will make a judgment of that
18 and a recommendation to the judge.

19 But then, ultimately, Your Honor will make the decision on
20 his own, taking into account that recommendation. But it's his
21 decision.

22 **Q.** You understand that only the U.S. Attorney, your sponsor
23 here as a trial witness, can ask for the leniency; correct?

24 **A.** I believe my attorney or -- could also request leniency as
25 well, is my understanding.

1 Q. You understand that your attorney cannot ask for leniency
2 under the section of the sentencing guidelines that provides
3 it; correct?

4 A. Yes, because he's not specifically named here.

5 Q. He's not the government lawyer?

6 A. Correct.

7 Q. Only the government lawyer can make that motion for
8 leniency; correct?

9 A. Under these terms, yes.

10 Q. Well, these terms -- this is your plea agreement; correct?

11 A. With -- with the government, yes.

12 Q. All right. And you've been represented during these
13 proceedings by Harry Stern; correct?

14 A. Yes.

15 Q. Now, you understand that, when it comes to your sentencing
16 date, it's only the government that has a choice whether to ask
17 for a lower sentence based on your cooperation; correct?

18 A. It's my understanding that they make that determination.
19 So, yes, they would be the only people involved in that.

20 Q. When they make that determination, what do you think
21 they're going to consider?

22 A. Uhm, they're going to, hopefully, consider my
23 conversations with them, my testimony in this trial, and
24 anything further we would talk about.

25 Q. Particularly, they're going to consider whether or not you

1 were truthful during your testimony; right?

2 **A.** Yes.

3 **Q.** And do you think there's a chance that being truthful, in
4 their view, means your testimony tracks their theory of the
5 case? Do you happen to think that's a possibility here?

6 **A.** It could be a possibility, yes.

7 **Q.** It could be. Do you think it's more likely than not that
8 their idea of truthfulness is you tracking their narrative of
9 this case?

10 **A.** I think a large component of that is also corroborating
11 the other testimonies that have already come before this.

12 **Q.** Let's talk about "corroboration" for a second, since you
13 use that word. You mentioned earlier in -- as an example, the
14 Andrew Byrd police report, you talked about how a lot in the
15 police report was accurate.

16 Do you remember that testimony?

17 **A.** I don't recall speaking that a lot was accurate. I think
18 we were talking specifically about inaccuracy.

19 **Q.** We were talking about the fact that, in the Andrew Byrd
20 example, you did book drugs and you did book pay/owe sheets and
21 you did book this and you did book that, and it looks perfectly
22 natural except for the fact that there was no money booked.

23 Do you remember that testimony?

24 **A.** That which you just described is correct.

25 **Q.** So the fact of the matter is what made the Andrew Byrd

1 police report so credible is that there was a lot of truth in
2 it, there was more than a kernel of truth, there was a lot of
3 truth. The lie was that it says there was no money found. Am
4 I right?

5 **A.** That as well as, I think, our entry.

6 **Q.** So in a lot of these episodes where you stole money from
7 people, a lot about the police report is true, and that's what
8 makes the lie real; isn't it?

9 That's what makes the lie possible, there's so much truth
10 in what you write?

11 **A.** Are you asking me if that's correct?

12 **Q.** Yes.

13 **A.** Yes.

14 **Q.** Okay. So in terms of your cooperation agreement, you can
15 say a lot here that's true, but one little lie might get lost
16 in the shuffle. Do you agree with that, that that's possible?

17 **A.** Anything is possible, sure.

18 **Q.** Let's talk about that -- that search you did out on
19 19th Avenue. What was the name -- the nickname for Crosby
20 was --

21 **A.** Indio.

22 **Q.** What is it?

23 **A.** Indio, I-n-d-i-o.

24 **Q.** Okay. And you were out there -- let me see if I paint the
25 narrative correctly. You're out there with two real police

1 officers, police officers who are out there to do something
2 good for the community. And I'm talking about -- I think it
3 was Kenney and Greiner; am I right?

4 **A.** Yes.

5 **Q.** All right. And they're not out there to steal, are they?

6 **A.** No.

7 **Q.** You're out there to steal, you said?

8 **A.** Among other things, yes.

9 **Q.** So -- well, wait a minute. Among other things, you were
10 out there to steal money. That's why you went out there,
11 wasn't it? That was the main purpose.

12 **A.** My main purpose was to arrest Indio.

13 **Q.** It was?

14 **A.** Yes.

15 **Q.** And the money was like a sideshow to you?

16 **A.** In all of these cases, the money was not a guarantee.
17 There were many instances where we arrested people, where
18 everything was booked, money included. There were times where
19 there was narcotics involved, where there was no money;
20 therefore, money wasn't kept because money wasn't there. There
21 were times when only portions were booked and portions were
22 kept.

23 **Q.** I thought you said that you got out there to Indio's
24 trailer -- right? He lived in a trailer?

25 **A.** A storage space.

1 Q. Storage space?

2 You got out there, and you're out there with two honest
3 officers, Kenney and Greiner; right?

4 A. Yes.

5 Q. And you found some money, didn't you?

6 A. Yes.

7 Q. You found \$1,200, didn't you?

8 A. I don't recall the total amount.

9 Q. Does that sound about right?

10 A. It could or could not be. I remember there was a little
11 bit of a dispute about that later.

12 Q. Anyway, you found the money and Greiner and Kenney didn't
13 know you found the money, did they?

14 A. No.

15 Q. Robles wasn't there, was he?

16 A. Not when I found the money, no.

17 Q. Furminger wasn't there, was he?

18 A. Not when I found the money, no.

19 Q. So in terms of being a successful thief, at that moment
20 all you had to do was pocket the money and you've accomplished
21 your goal; correct?

22 A. If I was going to keep it for myself, yes.

23 Q. If you were going to keep it for yourself. You had it, by
24 yourself, at that moment with two honest police officers to
25 worry about; correct?

1 **A.** Right.

2 **Q.** So at that point doesn't it make sense that you would
3 pocket the money and divide it up later, if you wanted to do
4 that?

5 **A.** That is one possibility. But the other possibility is
6 that Mr. Robles was working that day and Mr. Furminger got
7 contacted and responded right out from wherever he was and came
8 right over to the location.

9 **Q.** That was your testimony. I'm asking you about something a
10 little bit different.

11 **A.** I'm just telling you what happened.

12 **Q.** I'm asking you, when you found the money and you are in
13 the vicinity of two honest police officers who might detect
14 your thievery, the smart and logical thing to do would have
15 been to pocket the money; correct?

16 **A.** That -- the smart way to steal something? That's one way
17 to steal something. I chose a different way to steal
18 something.

19 **Q.** Pardon?

20 **A.** I chose a different way to steal it.

21 **Q.** At that point when you had the money, there was no purpose
22 to your thievery to have Robles and Furminger come out.

23 You had them come out to create that kind of frame for
24 them, didn't you?

25 **A.** No. I was following a pretty standard practice that we

1 had, that when we were each investigating a case we would be
2 each involved with the spoils of it. And if there were cases
3 where I wasn't party to, I wouldn't be involved with it.

4 **Q.** How ridiculous does it look for you to say that after
5 you've got the money and you've got two other officers doing
6 the search, you drag Robles and Furminger out just because
7 that's part of the honor among thieves?

8 Is that what you're saying?

9 **MR. HEMANN:** Objection. Argumentative.

10 **THE COURT:** Sustained.

11 **BY MR. GETZ:**

12 **Q.** You could have given them the money later; correct?

13 **MR. HEMANN:** Objection. Argumentative.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** That's one possibility, yes.

16 **BY MR. GETZ:**

17 **Q.** Do you agree with me that if the U.S. Attorney here
18 refuses to ask Judge Breyer to give you a lighter sentence
19 because of your cooperation, there's nothing you can do about
20 it?

21 **A.** Yes.

22 **Q.** Do you agree with me that you have no appeal from that
23 decision of the U.S. Attorney to refuse to ask you for
24 leniency? Do you agree with that?

25 **A.** Yes. I believe that's, in fact, part of the plea

1 agreement, that I have no appeal.

2 **Q.** That's right.

3 Now, let's go back -- let's go back a couple of months to
4 when you first got indicted.

5 Do you remember hearing that you got indicted?

6 **A.** I remember hearing that I was about to be indicted.

7 **Q.** And then the day came when you got indicted; remember
8 that? Remember hearing for the first time that you got
9 indicted?

10 **A.** Well, I believe I was actually arraigned while being
11 indicted.

12 **Q.** Well, I'm asking about the first time you had knowledge
13 that you were indicted. So I'm making a distinction between
14 before you were charged in this case -- before you were charged
15 in this case and being charged in this case.

16 I want you to think back and see if you can remember that
17 moment when you, Rey Vargas, knew for the first time you'd been
18 charged in this case. Do you remember that moment?

19 If you don't, that's fine.

20 **A.** Okay. What I'm explaining to you is that I found out from
21 my attorney that I was going to be indicted; that I found out,
22 I believe on a Tuesday night, that on the Wednesday there was
23 going to be an arrest warrant issued for me, and that I should
24 come up to San Francisco to deal with it immediately. And I
25 did deal with it on that Wednesday.

1 Q. But you came up here and you appeared in front of Judge
2 Breyer in the morning, and you were arraigned; correct?

3 A. Yes.

4 Q. And at that arraignment you entered a plea of not guilty;
5 right?

6 A. Yes.

7 Q. And you told anyone who would listen to you that these
8 charges were bogus; correct?

9 MR. HEMANN: Objection. Foundation.

10 THE COURT: Sustained.

11 BY MR. GETZ:

12 Q. Did you tell family members that you were innocent?

13 A. Yes, I may have.

14 Q. Did you tell friends that you were innocent?

15 A. I may have.

16 Q. When you saw police officers you knew around town, and
17 they said, Hey, Rey, man, good luck, I know you're going to
18 beat it, did you say, Thank you, I'm going to beat it?

19 A. I didn't live here in San Francisco anymore, so I didn't
20 really run into anybody to even have that sort of conversation.

21 Q. How about when you came up here for those court
22 appearances?

23 You came up here for court a couple of times before we
24 reached this point where you're now testifying; correct?

25 A. I came up to meet with my attorney, yes.

1 Q. And when you came up, did you ever run into your old
2 brother officers and hear them say, Rey, you can beat this
3 case?

4 A. That was never really part of the conversations. They
5 just mostly -- I remember running into a couple of police
6 officers and they really asked me like if I was okay and how I
7 was doing.

8 Q. What did you tell them?

9 A. Told them I was doing okay, doing the best I could.

10 Q. Did you tell them you were going to win your case?

11 A. I don't remember ever saying that.

12 Q. Did the Police Officer Association have a fundraiser to
13 give money for officers like you who are charged?

14 A. They may have, but I'm not aware of it.

15 Q. You didn't get any of that money?

16 A. Not a penny. Not a -- not a penny.

17 Q. Did they take care of your legal fees?

18 A. They did.

19 Q. Did you tell Police Officer Association personnel that
20 this case was bogus and you were going to beat it?

21 A. No. I think mostly I talked about the witnesses and --
22 two in particular, Daisy and Jayme -- that they didn't have
23 much credibility.

24 Q. Did you tell people between the indictment and your change
25 of plea that you were going to beat this case because you're

1 innocent?

2 Did you shout that from the rooftops to anyone who would
3 listen?

4 **A.** No.

5 **Q.** Why not?

6 **A.** First of all, I don't really speak in those sort of
7 bravado sort of terms. And, second, ultimately, I knew that
8 I'm guilty. So that -- I wasn't really going to be saying
9 things like that.

10 I mostly spoke about the credibility of certain people in
11 this case, meaning Daisy and Jayme, knowing that, you know,
12 although they made allegations about me providing them drugs,
13 they also threatened to extort me and kill me.

14 **Q.** Well, we talk about the subject of when you pled guilty,
15 because you just now said that you knew at some point you were
16 going to plead guilty.

17 You went all through the evidence before you made that
18 decision; correct?

19 **A.** Yes.

20 **Q.** And you were hoping against hope that you could beat this
21 case; right?

22 **A.** Initially, sure, yes.

23 **Q.** Because you didn't want to accept responsibility for what
24 you did; correct?

25 **A.** Initially, no.

1 Q. In fact, earlier today, this morning, I think you were
2 asked, "Why did you plead guilty?"

3 And you said, "Because I'm guilty." Do you remember
4 saying that?

5 A. Yes.

6 Q. But you knew that when the indictment first came down,
7 didn't you?

8 A. Yes.

9 Q. And you didn't plead guilty then, did you?

10 A. No.

11 Q. And you didn't plead guilty the month after you were
12 indicted, did you?

13 A. No.

14 Q. You didn't plead guilty five months after you were
15 indicted, did you?

16 A. No.

17 Q. You got indicted in the early part of 2014 and you pled
18 guilty in October of 2014; right?

19 A. Yes.

20 Q. Why then?

21 MR. HEMANN: Your Honor, to the extent this implicates
22 the attorney-client privilege, I'd just ask that the question
23 be rephrased.

24 BY MR. GETZ:

25 Q. Don't tell me anything about what Harry Stern told you.

1 I want to know -- based on your testimony that you pled
2 guilty because you were guilty, tell me why it took you so long
3 to do that. Why did you wait until October?

4 **A.** In those specific instances -- as I said before, I don't
5 live here, so I wasn't -- I wasn't able to meet with my
6 attorney all the time. And so when I would come up and meet
7 with my attorney, that's when we would dive deeply into the
8 case, going through evidence, going through specifics.

9 And there came a time where it was, frankly, very
10 difficult for me to say I'm just going to stop lying. That's
11 it. You know, I'm guilty. Everything that they're saying by
12 and large is true.

13 And so at that point I said that's -- you know, and I
14 remember, like, literally shaking before the decision and
15 finally saying, that's it, all right, I'll say I'm guilty of
16 this, I'm guilty of this, going down the line and describing
17 point by point what I had done, what I knew. And that was it.

18 **Q.** Give me a time frame for when you, in your own words,
19 decided you were going to stop lying. How about a time frame
20 for that? How about a month?

21 **A.** I've known what the truth was, but up until this point I
22 had maintained this lie to myself, even to my family, just not
23 wanting to talk about it, not wanting to admit to them. It's
24 humiliating to tell them, yes, I made these mistakes, these
25 really terrible mistakes.

1 It's terrible for me to say that to them. It's hard for
2 me to say it. But there came a point in time and -- through
3 the summer and, basically, as the -- the date of the trial
4 became closer, there was a weight on me. And I just didn't
5 want to carry that anymore. It would make me sick.

6 And I just got sick of having to deal with that and hold
7 that in. And so through the summer and subsequent meetings
8 with my attorney, as things got more and more concrete, and the
9 date -- you know, that time to the date became closer and
10 closer, the pressure mounted.

11 And for me, I just sat there looking at it, looking at
12 everything, the totality of everything, and I just didn't
13 want -- I didn't want to keep that in anymore. And so I don't
14 know the exact month, but it was a process through all of that
15 time.

16 **Q.** The next couple of questions that I have on this subject,
17 I don't want you to say anything about what your attorney told
18 you. I want to know -- what I'm asking about is what was
19 happening under your dome. That's what I want to know. Not
20 what anybody told you.

21 Now, do you remember this morning you were talking about
22 lying in an OCC proceeding involving excessive force?

23 **A.** Yes.

24 **Q.** Now, just to put that in context, the Office of Civilian
25 Complaints is a very significant operation as it pertains to

1 the San Francisco Police; correct?

2 **A.** Sure.

3 **Q.** That is an independent watchdog agency which has and does
4 result in investigations which can get police officers fired;
5 correct?

6 **A.** They can, yes.

7 **Q.** And you knew when you were going in to the OCC proceedings
8 that if this investigation went the wrong way for Rey Vargas,
9 you could lose your job; right?

10 **A.** Yes.

11 **Q.** And you didn't want to lose that job, did you?

12 **A.** No.

13 **Q.** That job you got in 1999, when you took the oath and, you
14 know, you swore to defend against all enemies, that's the best
15 job Rey Vargas ever had, wasn't it?

16 **A.** It was one of the best, yes.

17 **Q.** So I want you to go back to that time frame when you're
18 heading toward the OCC investigation.

19 You prepared for that hearing, didn't you?

20 **A.** Yes.

21 **Q.** You were represented by an attorney in that hearing,
22 weren't you?

23 **A.** In that hearing, yes.

24 **Q.** You were going to testify in that hearing; correct?

25 **A.** In the interview. I was interviewed, but that wasn't a

1 hearing.

2 Q. So speaking of the interview, you knew the interview was
3 going to happen on a particular day before it happened. It
4 wasn't a surprise when you showed up there, was it?

5 A. No, it was scheduled.

6 Q. And you had time to plan and plot what you were going to
7 say at that hearing; right?

8 A. Sure.

9 Q. So when you showed up and you lied, it wasn't something
10 that was just off the cuff, you had planned the lie; correct?

11 A. Uhm, sure, okay.

12 Q. You had made up a story and you had thought it over to
13 make sure that that story was bulletproof; right?

14 A. The story was not bulletproof.

15 Q. You gave a story you thought was bulletproof though,
16 didn't you?

17 A. I gave a story that glossed over some very specific
18 details.

19 Q. You lied intentionally to protect your position; right?

20 A. Yes. And to keep myself from discipline, yes.

21 Q. And that is something of a pattern for you, isn't it?

22 You lie when it's to your advantage; am I right?

23 A. Sure. I think you could say that about most lies.

24 Q. It certainly was true in the Andrew Byrd police report and
25 all these other police reports when you lied by omitting money

1 that you found; correct?

2 **A.** Yes.

3 **Q.** That was to your advantage?

4 **A.** Absolutely.

5 **Q.** And that also was to your advantage because it kept you
6 from being found out to be the thief that you are; correct?

7 **A.** Yes.

8 **Q.** And you did that repeatedly, didn't you?

9 **A.** Yes, I sure did.

10 **Q.** You said this morning that you went in to steal 30, 40, 50
11 times. Do you remember that?

12 **A.** Uhm, yes, with -- that was with Mr. Robles and
13 Mr. Furminger, sure.

14 **Q.** Yeah, we're just talking about Mr. Vargas now for a
15 minute. I want to talk about you.

16 I want to talk about how you, in every police report you
17 ever wrote up, wherever you stole, you lied because that was to
18 your advantage; am I right?

19 **MR. HEMANN:** Objection, Your Honor, foundation. The
20 30, 40, 50 times were in '09, I think, is what he was talking
21 about, which is why the answer --

22 **THE COURT:** Sustained.

23 **BY MR. GETZ:**

24 **Q.** Now, in this situation here, where you're testifying, in
25 order for you to get the benefit of your testimony in a shorter

1 sentence, do you agree with me that the Honorable Judge Breyer
2 has to believe you?

3 **A.** Absolutely.

4 **Q.** And do you agree with me that if he doesn't believe what
5 you say, you run the risk of getting more time in prison?

6 **A.** That's a definite possibility, yes.

7 **Q.** Do you agree with me that being in prison, for an
8 ex-police officer, is not the best position to be in?

9 **A.** I can't think of many worse positions, no.

10 **Q.** So you have a real incentive here to get the lowest
11 possible sentence you can get; correct?

12 **A.** I believe my incentive is to be as truthful as possible.

13 **Q.** And truthful, to you, means tracking your testimony to the
14 government's narrative; correct?

15 **A.** No. Being truthful is being as forthcoming as I can about
16 everything that I remember and everything that I know.

17 **Q.** You painted a little picture this morning about the ride
18 out to Newark, talking about the ride out to Newark with
19 Furminger and Robles. Remember that?

20 **A.** Yes.

21 **Q.** Do you remember describing that ride out to Newark? You
22 described the picture where the three of you were in a car.
23 And based on what had happened earlier, taking down these drug
24 dealers and learning about the potential for a place in Newark
25 where there could be a lot of money found, you painted a

1 picture about how you three were talking about it on the way
2 out to Newark. Do you remember that?

3 **A.** Yes.

4 **Q.** And you painted a picture that had Mr. Furminger talking
5 about how much money might be found, and how this could be a
6 big score, and so I forth and so on. Remember that?

7 **A.** Yes.

8 **Q.** All right. Now, I want you to remember that when I ask
9 you whether on October 28th, of this year, you had an interview
10 with special agent Tyler Nave, of the FBI, in which you talked
11 to him about the Newark caper; do you remember that?

12 **A.** Yes, I remember talking to him.

13 **Q.** And present during the interview were
14 Special Agent Flores, and Mr. Villazor and Mr. Hemann were
15 there. Do you remember that?

16 **A.** Yes.

17 (Government and defense counsel confer off the record, out
18 of hearing of the jury and reporter.)

19 **BY MR. GETZ:**

20 **Q.** Now, with the Court's permission I'm going to show you a
21 memorandum of an interview from that. Memorandum from that
22 interview. And I would like you to -- like you to read that
23 paragraph right here to yourself, and tell me when it's
24 finished. Just read that quietly to yourself, please.

25 **A.** (Witness complies.)

1 Q. Now, Mr. Vargas, on October 28th, less than a month ago,
2 you told a different story about Newark; didn't you?

3 A. It's slightly different, yes.

4 Q. You said that on the ride out to Newark nothing was spoken
5 about money or a big score; correct?

6 A. That's what's there, yes.

7 Q. You said nothing was discussed on the way to Newark about
8 splitting it up; correct?

9 A. That was often the case. We -- prior to that we never
10 talked about dividing up monies, or we're each going to get a
11 third each, or anything like that. We never talked about money
12 in those terms at all.

13 Q. Oh, Mr. Vargas, I didn't ask you that. I didn't ask about
14 generally.

15 Let me start again by reminding you of the picture you
16 painted this morning with Mr. Furminger and you talking about
17 big score, money, split it up, dig in the backyard, and
18 whatever else you said.

19 Do you have that in mind?

20 A. Yes.

21 Q. When you talked to these honorable people (indicating) on
22 October 28th, you didn't say anything about that; did you?

23 MR. HEMANN: Objection. Vague as to what "that" in
24 that list is.

25 MR. GETZ: Fine.

1 **BY MR. GETZ:**

2 **Q.** You didn't say anything about "We're going to get cash out
3 there; we could have a big score," did you?

4 **MR. HEMANN:** Objection. Vague as to time.

5 **BY MR. GETZ:**

6 **Q.** I'm talking about this meeting you had on October 28th. I
7 just showed you the memorandum of interview. Would you like to
8 see this again?

9 **A.** No.

10 **Q.** You didn't say it; did you?

11 **MR. HEMANN:** Objection. Vague as to "it," Your Honor.

12 **BY MR. GETZ:**

13 **Q.** You didn't say anything about going out to Newark to get
14 money at this place; did you?

15 **A.** I don't recall if I mentioned that specifically or not
16 then.

17 **Q.** What you said was -- and this is on October 28th, with
18 reference to the Newark caper.

19 **MR. HEMANN:** Objection to reading the 302, Your Honor.

20 **MR. GETZ:** I'm not going to read it. I'm going to ask
21 him the question, with the Court's permission.

22 **THE COURT:** Go ahead.

23 **BY MR. GETZ:**

24 **Q.** Did you say, on October 28th, that, "We don't talk about
25 money on the way out; it's understood"? Did you say that?

1 **A.** I would have said something very close to that, yes.

2 **Q.** But today is a much more elaborate vision of what ride out
3 to Newark; am I right?

4 **A.** Uhm, there's more about, yes. I have spoken more about
5 it, yes.

6 **Q.** Let's talk about something else you said at that
7 interview.

8 Were you asked at that interview -- on October 28th, you
9 were asked how often you stole money and valuables during a
10 13-month period. Do you remember that question?

11 **A.** Yes.

12 **Q.** And you said that you stole money and valuables in 10 to
13 20 incidents in that 13-month period. Do you remember that
14 answer?

15 **A.** I don't remember it specifically.

16 **Q.** Okay. Would it help if I showed you the report of that
17 interview?

18 **A.** Sure.

19 (Government and defense counsel confer off the record, out
20 of hearing of the jury and reporter.)

21 **BY MR. GETZ:**

22 **Q.** Mr. Vargas, could you just read this first sentence to
23 yourself (indicating). And let me know when you're done.

24 **A.** (Witness complies.)

25 Okay.

1 Q. Mr. Vargas, did you say on October 28th that there were 10
2 to 20 incidents during a 13-month period when you stole money
3 and valuables?

4 A. I said it then, yes.

5 Q. And today, this morning, we're raising the stakes a little
6 bit. Now it's 30, 40, 50; correct?

7 A. Yes. I believe that's a much truer number.

8 Q. So how did we go from 10 to 20 before you testify, how do
9 we go to 30, 40, 50? Could you explain that to me?

10 A. I just believe that's a very conservative estimate. And
11 the number I said today is probably much more closer to the
12 truth.

13 Q. Look. You knew you were coming up here for this interview
14 on October 28th; right?

15 A. Yes.

16 Q. You knew this was part of your cooperation agreement;
17 right?

18 A. Yes.

19 Q. You knew this was a formal part of your plea agreement, in
20 which you had to perform; right?

21 A. Yes.

22 Q. You knew that all these people at this table were going to
23 be interviewing you, expecting you to give truthful answers.
24 Am I right?

25 A. Of course.

1 Q. And you had a lot of time to think about what you were
2 going to say about these major events; right?

3 A. I had time to think about it. But as to the specifics of
4 each event, I didn't know which events we'd be going into until
5 we discussed them specifically.

6 Q. By the time you came up here on October 28th, you had read
7 a lot of the police reports we've discussed here during your
8 testimony; correct?

9 A. The hundreds and hundreds of police reports, yes.

10 Q. You had months to do that; right?

11 A. I actually didn't have personal copies of that stuff. So
12 I didn't read hundreds and hundreds of police reports.

13 Q. So when they asked you the most basic of all questions,
14 "How many times did you steal?" and you said 10 to 20 times,
15 was that the truth?

16 A. It's at least that much, and probably a lot more.

17 Q. So it was 10 to 20 times on October 28th. And now, while
18 you're performing -- and do you agree with me you're performing
19 right now? This is a performance. This is important. Do you
20 agree with that?

21 MR. HEMANN: Objection, Your Honor. Argumentative.

22 THE COURT: Sustained.

23 BY MR. GETZ:

24 Q. Do you agree with me that right now you're being evaluated
25 not just by the jury but by the U.S. Attorney's Office?

1 **A.** Absolutely.

2 **Q.** Do you agree that -- not just being evaluated by the
3 U.S. Attorney's Office -- you're being evaluated by a
4 United States District Court Judge who is going to sentence you
5 at some point? Do you agree with that?

6 **A.** Yes.

7 **Q.** And so before, before you're being evaluated in that
8 manner you say 10 to 20. You come in here this morning and you
9 say 30, 40, 50. Right?

10 **A.** Yes.

11 **Q.** Why do you think you raised the numbers?

12 **A.** Because I just think it's a more accurate assessment of my
13 conduct as well as the conduct of Mr. Robles and Mr. Furminger
14 during that period of time.

15 **Q.** What possibly happened between October 28 and today that
16 made you think of something you hadn't thought of before? What
17 came into your mind to raise the number?

18 **A.** Looking through all these incidents -- you know, this is
19 many years ago, so looking through them, things come back into
20 my mind. I refresh my recollection and the things -- you know,
21 specific instances come back that I just, frankly, hadn't
22 thought of in several years.

23 **Q.** I thought you said less than 30 minutes ago that for the
24 last seven or eight months you were reading all police reports
25 that you could get your hands on, conferring with your

1 attorneys, and talking about the evidence which, in your words,
2 has led you to the point where you're going to stand up and say
3 you're guilty.

4 Didn't you say that 30 minutes ago?

5 **MR. HEMANN:** Objection, Your Honor. Misstates the
6 testimony.

7 **THE COURT:** Sustained.

8 **BY MR. GETZ:**

9 **Q.** In any event, is it your testimony, then, that you
10 suddenly learned something new about the case between
11 October 28th and today, that you didn't know before, that
12 caused you to revise your numbers upward from 10 to 20, to 30,
13 40, 50?

14 Do you say that?

15 **A.** I'm not saying it's a specific instance or line or word
16 that I've read. I just believe that's a truer number, much
17 closer to an accurate number.

18 **Q.** You talked a little bit about the situation where you went
19 into the hotel room and there was -- there was somebody in
20 there named Kelsey. Do you remember that?

21 **A.** Yes.

22 **Q.** And if I say that her name is Kelsey Stewart does that
23 ring a bell?

24 **A.** That could be her last name, sure.

25 **Q.** Well, I represent to you that that's her last name. Do

1 you accept that?

2 **A.** Sure.

3 **Q.** So let's talk about Kelsey Stewart for a second.

4 Do you remember that you called her up and wanted to meet
5 her in a restaurant?

6 **A.** I recall being in contact with her. I don't recall who
7 called who, but I absolutely recall meeting her in a
8 restaurant, yes.

9 **Q.** Do you recall meeting her in a restaurant more than once?

10 **A.** I recall once. It could be twice, but I just recall once.

11 **Q.** What did you meet her in the restaurant for?

12 **A.** Uhm, to talk to her, to buy her lunch, and also to get
13 information from her.

14 **Q.** Did you get information from her?

15 **A.** No, not really.

16 **Q.** Did you talk about the case?

17 **A.** We talked about her boyfriend.

18 I was trying to get information from her regarding her
19 boyfriend.

20 **Q.** That would be Mr. Furlong?

21 **A.** Yes.

22 **Q.** You talked to her about Mr. Furlong.

23 **A.** Yes.

24 **Q.** If I told you that she testified under oath that you
25 didn't ask her one question about Mr. Furlong, would you say

1 she was lying?

2 **MR. HEMANN:** Objection. Relevance and foundation,
3 Your Honor.

4 **THE COURT:** Sustained.

5 **BY MR. GETZ:**

6 **Q.** Let's talk about Kelsey Stewart after the time that you
7 met her at the restaurant.

8 Do you remember calling her, to see her some more, and she
9 didn't want to see you? Do you remember that part?

10 **A.** No.

11 **Q.** Do you remember saying to her, "I can see you anytime I
12 want; I know where you live"? Do you remember that?

13 **A.** Not at all.

14 **Q.** Do you remember when you had her in custody -- and this is
15 during the time when you testified she made a call to work. Do
16 you remember that?

17 **A.** Yes.

18 **Q.** She made a call to work because since she was with you she
19 was going to miss her shift. Do you remember that?

20 **A.** Since she was being detained at the station, yes.

21 **Q.** All right. And she told you that in addition to being
22 concerned about missing her shift, there was a far, far more
23 grave matter that she wanted to attend to. Do you remember
24 that?

25 **A.** I don't recall that.

1 Q. Do you remember saying that she had a methadone clinic
2 appointment, and she needed to go pick up her methadone and
3 drop it with a cup of water?

4 A. Yeah, I don't recall that.

5 Q. You don't recall her methadone request?

6 A. No.

7 Q. And you don't recall her telling you that she really
8 needed to have her methadone that day?

9 A. I don't recall that.

10 Q. All right. Do you remember that on her way out the door,
11 after she missed the methadone appointment, you gave her some
12 heroin and some money? Do you remember that?

13 A. No, I don't.

14 Q. You don't?

15 So do you deny that you gave her heroin, or you're just
16 not sure? Maybe you did; maybe you didn't?

17 A. I don't deny it. I just don't recall it.

18 Q. You don't deny it because that's the kind of thing you
19 used to do; right?

20 A. At times I gave informants drugs. Absolutely. So that's
21 why I'm not denying it. I'm saying it could have happened. I
22 just don't recall it.

23 Q. Because there's so many times that you gave heroin to
24 someone who was trying to get off it because they were on
25 methadone; right?

1 **A.** I don't know if that's the specific reason or instance,
2 but yeah.

3 **Q.** That sounds like something you would do though; do you
4 agree?

5 **A.** Well, I agree that it's something I had done in the past.
6 I don't recall if I did with her. I don't recall it at all.

7 **Q.** Do you remember you were talking about Daisy and Jayme,
8 and you said -- you were describing the way they looked?

9 **A.** Yes.

10 **Q.** And you said, you know, heroin is a really bad drug on
11 their body.

12 Do you remember saying that?

13 **A.** Yes.

14 **Q.** What kind of a person would give that drug to somebody?

15 **MR. HEMANN:** Objection, Your Honor. Relevance.
16 Argumentative.

17 **THE COURT:** Sustained.

18 **BY MR. GETZ:**

19 **Q.** Do you understand that procedurally, in connection with
20 your plea agreement, none of the charges get dismissed with
21 finality until you're sentenced? Is that your understanding?

22 **A.** The charges against me?

23 **Q.** Yeah. You had a bunch of charges, and you pled guilty to
24 a couple of them. But there was one charge out there that
25 wasn't dismissed. And, in fact, your plea agreement calls for

1 the Judge to decide if it's going to be accepted. Do you
2 remember that language?

3 **A.** My understanding was that I pled guilty to four charges.
4 And I believe a fifth was dismissed. But if -- I may be
5 mistaken, but that's my belief.

6 **Q.** And your understanding is that the whole sentencing
7 structure, the whole scheme of federal sentencing, is based on
8 different components, but one of the most important for you is
9 your testimony here today; correct?

10 **MR. HEMANN:** Objection with regard to "the whole
11 scheme" in federal sentencing.

12 **THE COURT:** I'll sustain the objection. But if you
13 want to ask the question a different way, you certainly can.

14 **BY MR. GETZ:**

15 **Q.** Just on a scale of 1 to 10, in terms of what your
16 sentencing is going to be based on, how important do you think
17 it is that we believe your testimony?

18 **A.** I think that's the most important. Probably 10.

19 **MR. GETZ:** Thank you. I have nothing further.

20 **THE COURT:** Okay. Ms. Caffese.

21 **MS. CAFFESE:** Thank you, Your Honor, yes.

22 **CROSS EXAMINATION**

23 **BY MS. CAFFESE:**

24 **Q.** Mr. Vargas, what is a crime of opportunity?

25 **A.** I guess I would describe it as -- as the opportunity

1 presents itself, then that person chooses to engage in that
2 crime.

3 **Q.** So if I understand your testimony from yesterday, is that
4 the crimes that you committed were crimes of opportunity for
5 you; is that right?

6 **A.** I'd say that's -- that's very fair, yes.

7 **Q.** Were there any other reasons that you committed these
8 crimes, sir, aside from the fact that they were just crimes of
9 opportunity?

10 **A.** I'm not sure I understand your question.

11 **Q.** Was there any other motive or any other reason -- aside
12 from the fact that it just presented itself as an
13 opportunity -- that you would commit these crimes; stealing
14 money from people, for example?

15 **MR. HEMANN:** Objection, Your Honor. Motive and
16 opportunity are not the same thing.

17 **THE COURT:** Well, that's why the question is unclear.
18 Are you asking did he have any reason other than that
19 there was an opportunity to commit a crime?

20 **MS. CAFFESE:** Yes.

21 **THE COURT:** So no other reason. He just simply had an
22 opportunity and, therefore, he did it?

23 **MS. CAFFESE:** Yes.

24 **THE COURT:** So the motive -- you say excluding motive.
25 I'm trying to figure out -- most people who steal money steal

1 money because they want the money. But I'm trying to figure
2 out whether you're dividing --

3 **MS. CAFFESE:** Let me rephrase it.

4 **THE COURT:** -- motive from opportunity.

5 **BY MS. CAFFESE:**

6 **Q.** Your testimony yesterday, sir, was you committed these
7 crimes because, simply, they were crimes of opportunity; right?

8 **A.** Yes.

9 **Q.** All right. Like the Apple gift cards. They just were on
10 the floor. You picked them up. Is that right?

11 **A.** Yes.

12 **Q.** Okay. Well, were there any other reasons -- aside from
13 the fact that it was just simply a crime of opportunity -- that
14 you engaged in this conduct that you've been describing?

15 **A.** Well, for example, if it was money it's because I wanted
16 the money.

17 **Q.** Right. You wanted to steal money, for example; is that
18 right?

19 **A.** Yes.

20 **Q.** And sometimes, for example, when you would steal the
21 things that you testified to there were other officers present;
22 is that right?

23 **A.** Yes.

24 **Q.** All right. So when there were other officers present you
25 had to try to hide, for example, stealing a laptop or whatever

1 it was that you were stealing when those other officers are
2 present. True statement?

3 **A.** Yeah.

4 **Q.** Now, you testified today and yesterday that you were not
5 really friends with Officer Robles; is that right?

6 **A.** No, I said we were friends.

7 **Q.** Well, when you first started working with him you didn't
8 know him very well; is that right?

9 **A.** No, I hadn't -- prior to working with him I hadn't really
10 met him before.

11 **Q.** And you didn't socialize with him; is that right?

12 **A.** We did -- we didn't socialize often. We did on occasion,
13 but not often.

14 **Q.** And you didn't go over his house to play video games with
15 him; is that right?

16 **A.** No, I think I've only -- I had only been to his house
17 maybe once or twice.

18 **Q.** You only played video games with Cesar Hernandez; is that
19 right?

20 **A.** He's not the only person, but he is a person.

21 **Q.** Because Cesar was your friend; is that right?

22 **A.** Yes. Later on, after my relationship with Cesar we
23 became -- yeah, we became friendly.

24 **Q.** And Ed didn't help you, you and your girl- -- or didn't
25 help you move your girlfriend out of her apartment two times;

1 is that right?

2 **A.** No. Ed -- or Mr. Robles helped me move personally when I
3 left the Bay Area. He himself came and helped me move.

4 **Q.** Did Ed help your girlfriend and you move your girlfriend
5 out of her apartment on two occasions?

6 **A.** No.

7 **Q.** No.

8 Cesar helped you and the girlfriend move on two occasions;
9 is that right?

10 **A.** Yeah. For pay, but absolutely.

11 **Q.** Right.

12 And on one of those occasions was when you hit a parked
13 car and just kept going even though you had caused damage to
14 is; is that right? Remember that?

15 **A.** No.

16 **Q.** You don't remember that?

17 **A.** No.

18 **Q.** Okay. So could that have happened that you would have hit
19 a parked car and not stopped?

20 **A.** I don't believe I hit a parked car.

21 **Q.** Now, you testified yesterday that the first time that you
22 stole from a crime scene was essentially when you were
23 partnered up with Ed Robles; is that right?

24 **A.** That's what I recall, yeah.

25 **Q.** But you can't recall the circumstances of that; is that

1 right?

2 **A.** As I recall it, I was given money. Money was, like,
3 slipped into my pocket.

4 **Q.** Well, but aside from that, you can't recall the
5 circumstances of where you were, for example; is that right?

6 **A.** I don't recall the specific incident, no.

7 **Q.** You can't recall what month it was; is that right?

8 **A.** Well, I can limit it -- I can guess that it could only be
9 either January or February of 2009, because prior to that I had
10 never worked with Mr. Robles.

11 **Q.** You can't remember what arrest that was; is that right?

12 **A.** That's correct.

13 **Q.** And then when you interviewed with the FBI agents on the
14 20th and 21st of 2014, didn't you say that, quote, you believed
15 it was more likely that it was Robles that first put cash in
16 your pocket because he was not close, because you weren't close
17 with Furminger; is that right?

18 **A.** If that's what it says then, yes, that's what I said.

19 **Q.** And you don't know whether or not there were any other
20 officers present when Officer Robles allegedly put this money
21 in your pocket; is that right?

22 **A.** I don't believe so, no.

23 **Q.** And you never actually complained to anybody that Officer
24 Robles put money in your pocket that day; is that right?

25 **A.** No.

1 Q. And the circumstances and specifics of that incident are
2 not really particularly detailed for you; is that true?

3 A. Yes.

4 Q. Now, you testified that it was essentially around the
5 period of time, this period of time, that your life of crime
6 began; is that right?

7 MR. HEMANN: Objection, Your Honor. Misstates the
8 testimony.

9 MS. CAFFESE: I'll rephrase.

10 BY MS. CAFFESE:

11 Q. It was during this period of time that, essentially, you
12 said you started engaging in misconduct. Is that right? Was
13 that your testimony yesterday?

14 A. I stated that -- I believe I stated that I began stealing,
15 you know, money and other property with Mr. Robles and
16 Mr. Furminger about that time, yes.

17 Q. Right. And it would have also been at that time,
18 according to your testimony, that you started writing false
19 police reports, for example; is that right?

20 A. Yes. Specifically to hide the thefts, yes.

21 Q. And lying, for example; is that right?

22 MR. HEMANN: Your Honor, objection. Vague as to lying
23 about what.

24 THE COURT: Sustained.
25

1 **BY MS. CAFFESE:**

2 **Q.** Well, is it your testimony that -- is it your testimony
3 that when you began working with Ed Robles, for example, that
4 you also started to lie about some of your conduct?

5 **MR. HEMANN:** Objection, Your Honor. Relevance.

6 **THE COURT:** Well, I'll allow it.

7 **MR. HEMANN:** Your Honor --

8 **THE COURT:** I'll see where it goes.

9 **MR. HEMANN:** And the objection relates to a matter
10 that we discussed outside the presence of the jury earlier.

11 **THE COURT:** Well, you're not referring to that, are
12 you? I don't know what --

13 **MS. CAFFESE:** I thought I could refer to it. Perhaps
14 I'm -- I'm trying to lay a foundation.

15 **THE COURT:** I mean, you can use that as a point. I
16 mean, I think that if what you're -- I don't know to what
17 extent you're inquiring into it. The testimony is what the
18 testimony is. If you want to -- why don't you either -- recite
19 what the testimony is and then just move on from there, I
20 think.

21 **BY MS. CAFFESE:**

22 **Q.** Sir, we talked a little bit earlier about the fact that
23 you used excessive force in an arrest back in 2002; is that
24 right?

25 **MR. HEMANN:** Objection, Your Honor.

1 **THE COURT:** No. I think what he testified to was he
2 lied to the Office of Citizen Complaints in connection with an
3 investigation regarding excessive force. That's what the
4 testimony was.

5 **MS. CAFFESE:** Yes.

6 **THE COURT:** And that's what we're going to leave at
7 that point. He stated that's what he did. In 2002, he lied.

8 **MS. CAFFESE:** Yes.

9 **THE COURT:** As I recall the testimony.

10 But, of course, ladies and gentlemen of the jury, it's
11 your recollection that controls here so I don't want to tell
12 you what the testimony is. That's up to you.

13 But we're going to proceed from that point and move on to
14 whatever subject you want, but not that subject.

15 **MS. CAFFESE:** I just wanted to ask him the question
16 whether or not he lied again in 2002.

17 **MR. HEMANN:** Objection. Asked and answered.

18 **THE COURT:** He said yes.

19 **MS. CAFFESE:** Right.

20 **THE COURT:** He said he did.

21 **BY MS. CAFFESE:**

22 **Q.** You also lied -- well, you weren't working with Ed Robles
23 when you lied to the OCC in 2002; were you, sir?

24 **A.** No.

25 **Q.** And when you were working from, let's say, about 2007 up

1 until 2009, when you cheated on your time sheets, you weren't
2 working with Ed Robles; were you, sir?

3 **MR. HEMANN:** Objection. Foundation and compound.

4 **THE COURT:** Well, I think you have to lay a
5 foundation.

6 **BY MS. CAFFESE:**

7 **Q.** Sir, you lied on your time sheets from 2007 until 2009;
8 isn't that true?

9 **A.** No.

10 **Q.** You didn't lie?

11 **A.** No.

12 **Q.** Did you ever put in overtime for days in which you were
13 actually working?

14 **THE COURT:** I'm sorry, I don't get the question.

15 **MS. CAFFESE:** Excuse me.

16 **BY MS. CAFFESE:**

17 **Q.** When you were not --

18 **THE COURT:** If you're working --

19 **MS. CAFFESE:** Excuse me. I meant --

20 **THE COURT:** Overtime is working; isn't it?

21 **BY MS. CAFFESE:**

22 **Q.** Did you ever put in false time cards?

23 **A.** The cards that you're speaking of, the court cards, they
24 were not -- I don't believe they're false, no.

25 **Q.** You don't believe they were false; is that correct?

1 **A.** Yes.

2 **Q.** Just as you didn't believe, for example, that you wrote
3 accurate -- that you -- your testimony, your testimony under
4 oath is that you never submitted false time sheets; is that
5 your testimony, sir?

6 **A.** If you're specifically talking about requests for court
7 compensation, I don't believe they were false. They were
8 incorrect and they were improper and not eligible for
9 compensation, but they were not false.

10 **Q.** They were incorrect and they were improper; is that right?

11 **A.** Correct.

12 **Q.** Okay. Which means you didn't -- you were not owed the
13 overtime that you claimed. True statement?

14 **A.** Some of those cards were invalid. So on those specific
15 cards they were ineligible to be put in for compensation, and
16 weren't.

17 **Q.** Right. And during that time period that we're referring
18 to, from 2007 until 2009, Ed Robles wasn't working with you; is
19 that right?

20 **A.** Well, no, he was.

21 **Q.** From 2007 -- excuse me. From 2007 until 2008, Ed Robles
22 wasn't working with you; is that right?

23 **A.** That period, no, he was not.

24 **Q.** Now, you also became friendly with Cesar Hernandez; is
25 that right?

1 **A.** Yes.

2 **Q.** And during the time period in which you worked with Cesar
3 Hernandez you were -- you were actually admonished by
4 Lieutenant Pedrini not to be making -- not to be meeting with
5 informants such as Cesar alone; is that right?

6 **A.** I don't recall that.

7 **Q.** That could be true though; is that right?

8 **A.** It absolutely could be. I just don't recall it.

9 **Q.** Right. And that could be true because there were things
10 that you wanted to talk with Cesar Hernandez about outside the
11 presence of other police officers or witnesses; isn't that
12 true?

13 **A.** I don't know why I was admonished for that, but I don't
14 know if that was the reason or not.

15 **Q.** But you weren't supposed to be talking with CIs alone; is
16 that right?

17 **A.** I don't know if that's the case. That may be a department
18 policy. I just don't recall it.

19 **Q.** All right. Well, let's talk about some of the -- do you
20 recall giving Cesar Hernandez some receipts for payments on
21 cases --

22 **A.** Yes.

23 **Q.** -- that he purportedly was supposed to work on with you?

24 **A.** Yes.

25 **MS. CAFFESE:** Can I have that exhibit? I think it's

1 been introduced into evidence.

2 And I wanted to use the ELMO, Madam Clerk, if I could.

3 And I'm referring to Exhibit 56.

4 (Government and defense counsel confer off the record, out
5 of hearing of the jury and reporter.)

6 **MR. HEMANN:** Flip these things.

7 **MS. CAFFESE:** Oh. Thank you, sir. Perfect.

8 **BY MS. CAFFESE:**

9 **Q.** All right. Now, sir, one thing that I wanted to ask you
10 about, first, is that when you were interviewed back on
11 October 21st -- excuse me, 20th and 21st of 2014, you stated --
12 or did you state -- excuse me. Did you state that your
13 reports, referring to your police reports, were accurate?

14 **A.** I believe I characterized them as pretty accurate, but
15 yes.

16 **Q.** Yeah. Do you want me to -- if you -- do you remember
17 telling the FBI agents and the government here, when you were
18 interviewed for the first time, that your reports were
19 accurate?

20 **MR. HEMANN:** Objection. Foundation. It's just what
21 he testified to, Your Honor.

22 **THE COURT:** Sustained.

23 **BY MS. CAFFESE:**

24 **Q.** And that was the first time that you spoke with the
25 agents, back on October 20th, 2014, about the details of this

1 case; is that right?

2 **A.** I believe they tried to interview me a couple of times,
3 but that's when we were actually conversing about it, yes.

4 **Q.** Right. So the first time, essentially, that you spoke
5 with the government about this case, and you said that your
6 reports were accurate, that was actually a lie. True
7 statement?

8 **A.** I guess it depends on which facet. But, I mean,
9 obviously, my reports would be extremely inaccurate when -- in
10 regards to my theft. I wouldn't delineate my theft in the
11 report, or thefts I was party to.

12 But in terms of the details and locations and times and
13 people there and evidence booked, all that stuff would be very
14 accurate.

15 **Q.** Well, when you said that your reports were accurate -- and
16 you just testified to that statement; that's what you told the
17 government when you were supposed to be telling the truth --
18 you lied at the outset?

19 **A.** I believe -- as I said, I believe what I said is that my
20 reports are pretty accurate. They are.

21 **Q.** "Pretty accurate." What do you mean by "pretty accurate"?

22 **THE COURT:** Well, I think he's answered that, okay.

23 **BY MS. CAFFESE:**

24 **Q.** The fact of the matter is that you lied in several of the
25 police reports that you said, quote, were accurate, when you

1 first met with the government in this case. True statement,
2 sir?

3 **MR. HEMANN:** Objection. He testified that they were
4 pretty accurate.

5 **THE COURT:** Sustained.

6 **BY MS. CAFFESE:**

7 **Q.** All right. Well, let me ask you -- I'm going to put up
8 here -- this is Government Exhibit 56. Can you see it on your
9 screen there, Mr. Vargas?

10 (Document displayed.)

11 **A.** Yes.

12 **Q.** All right. And see at the top there -- well, what is
13 this?

14 **A.** That is a receipt that -- a form that we would use to
15 account for payment to an informant.

16 **Q.** Right. And this one here is "Received from Vargas,"
17 right, "979"? You see at the top here --

18 **A.** Yes.

19 **Q.** -- "Vargas"?

20 Okay. And do you see here that it was purportedly for a
21 purchase of heroin; is that right?

22 **A.** Yes.

23 **Q.** And then you've got a signature of a recipient there?

24 **A.** Yes.

25 **Q.** Do you know whose signature that is?

1 **A.** Yeah. I'm reading it now, yes.

2 **Q.** What is it? Who is it?

3 **A.** Looks like the person we call The Shah.

4 **Q.** Right. And The Shah is a different person, a different
5 informant than Cesar Hernandez; isn't that true?

6 **A.** They are different people.

7 **Q.** All right. And, in fact, here you see, "No, not my
8 signature." Is that right?

9 **A.** I see that, yes.

10 **Q.** And the reason why that's significant, "No, not my
11 signature," signed by Cesar Hernandez, is because 09-08 is the
12 CI number for Cesar Hernandez; is that right?

13 **A.** Yes, I believe so.

14 **Q.** Okay. And that's -- that was a falsified receipt; isn't
15 that true?

16 **A.** Uhm, it's inaccurate.

17 **Q.** Inaccurate.

18 Well, let me ask you about this receipt and see if it's
19 inaccurate also, okay, sir. And this is page 9 of that same
20 exhibit.

21 (Document displayed.)

22 **Q.** Do you see it here, sir?

23 **A.** Yes.

24 **Q.** And we've got you, as Vargas, as the one who's the person
25 that the money was received from; is that right?

1 A. Yes.

2 Q. All right. And we've got here a date of August 25th,
3 2010, which is another date from the one that I just showed
4 you; right?

5 A. Yes.

6 Q. And here we have the CI number as 09-08. Is that right?

7 A. Yes.

8 Q. And you know that 09-08 belongs to Cesar Hernandez; is
9 that right?

10 A. I believe that's correct, yes.

11 Q. And, once again, this is a falsified receipt. True
12 statement?

13 A. It's inaccurate.

14 Q. Okay. Well, let's -- let's go through another one, okay,
15 and see if this one's inaccurate too.

16 (Document displayed.)

17 Q. We've got one here dated -- and this is page 3 of the same
18 exhibit. Once again, this is from Vargas; right? You?

19 A. Yes.

20 Q. And this has a date of 9/9/2010; is that right?

21 A. Yes.

22 Q. In fact, that was a date in which Officer Robles, over
23 here, wasn't even working with you; is that right?

24 A. That may be the case, yes.

25 Q. And, in fact, this was a time when you took over Cesar

1 Hernandez as your informant; is that right?

2 **A.** I did take him over, yes.

3 **Q.** And this was another arrest of Joseph Furlong; is that
4 right? Supposedly anyway.

5 **A.** No. This is -- all this signifies is that some narcotics
6 were purchased from him. Whether or not he was arrested due to
7 this purchase, I can't recall.

8 **Q.** Okay. But it was dealing with Joseph Furlong; is that
9 right?

10 **A.** Yeah. According to this form, yes.

11 **Q.** Incidentally, the same -- basically, the same person which
12 led, ultimately, to the theft by you of the Apple gift cards.
13 True statement?

14 **A.** Exactly the person.

15 **Q.** And here we -- we have another signature by who? Do we
16 know whose signature that is?

17 **A.** That looks like who I would call The Shah. That looks
18 like his signature.

19 **Q.** Okay. And the CI number, once again, is 09-08; is that
20 right?

21 **A.** That's what was written there, yes.

22 **Q.** And was that another mistake?

23 **A.** Yeah, it's inaccurate.

24 **Q.** Inaccurate, right.

25 (Document displayed.)

1 Q. So let's see. This one here, we've got another one here.
2 And this is dated February 5th, 2011; is that right?

3 A. Yes.

4 Q. And February 5th, 2011, Officer Robles, over here, wasn't
5 working with you then either; was he?

6 A. No, not in 2011.

7 Q. All right. And we have here another indication here that
8 this was not the signature of Cesar Hernandez; is that right?

9 A. That's what's written there, yes.

10 Q. And that's true it wasn't his signature; is that right?

11 A. Those two signatures look different.

12 Q. Right.

13 A. I can say that.

14 Q. Yeah. Not his signature, huh?

15 A. I don't know that that's not his signature. I'm saying
16 that the two that are written down there don't look alike.

17 Q. And, once again, you used Cesar Hernandez's, your friend's
18 CI number on all of these mistakes that we've gone over; is
19 that right, sir?

20 A. Well, looking at that last slip, I believe that's a case
21 that Cesar did. So I think that's totally accurate.

22 Q. The signature doesn't match though; is that what you said?

23 A. The signatures don't look alike, but I believe that's a
24 buy that Cesar did. So everything on there would be accurate.

25 Q. You paid Cesar in cocaine; didn't you, sir?

1 **A.** Yes, I did once.

2 **Q.** And that was one time when you were working with Officer
3 Stanz (phonetic) on a buy/bust; is that right?

4 **A.** I don't recall when that was.

5 **Q.** Yeah. Did you ever tell Cesar Hernandez to just keep the
6 drugs he purchased during his buy/busts?

7 **A.** No, I wouldn't have told him to do that because in a
8 buy/bust I then had to justify the buy money being out. So
9 some narcotics had to be booked in as evidence. So I would
10 never tell him to keep everything.

11 **Q.** So let's talk about the Apple gift cards. And I think we
12 have an exhibit for that one too.

13 **MS. CAFFESE:** Do we have a receipt here that I could
14 have? Thank you.

15 This is Government's Exhibit 33. And I believe it's been
16 introduced into evidence.

17 **MR. HEMANN:** It is.

18 **THE COURT:** 33 is admitted.

19 **MS. CAFFESE:** Thank you.

20 **BY MS. CAFFESE:**

21 **Q.** So we talked yesterday, I think a little bit today, about
22 these Apple gift cards; is that right? Remember that, sir?

23 **A.** Yeah.

24 **Q.** All right. And it was you who went in to the
25 Marilyn Hotel room and took the Apple gift cards; is that true?

1 **A.** I took them, yes.

2 **Q.** And you stole them; is that right?

3 **A.** That's what I said, yes.

4 **Q.** And, in fact, you purchased an iPhone and a Nano iPod with
5 them; isn't that true?

6 **A.** No.

7 **Q.** And those two transactions were done by you; is that
8 right?

9 **A.** No.

10 **Q.** No? Okay. I'm going to put up here government Exhibit --
11 the first page of Government Exhibit 33.

12 (Document displayed.)

13 **Q.** We're going to just start with the top of this exhibit.
14 And I'm going to ask you here whether or not this is your name
15 that appears at the top. "Customer."

16 **A.** Yes.

17 **Q.** "Rey Vargas," right?

18 **A.** That's me.

19 **Q.** Okay. And do you see this receipt here -- and I'm
20 pointing here -- it says two purchases. One for \$199; is that
21 right?

22 **A.** Yes.

23 **Q.** And that is for -- I believe that is for the -- do you
24 know what that's for?

25 **A.** Can you --

1 Q. Go ahead.

2 A. -- zoom out a little bit?

3 Perfect. That's fine.

4 Q. Thank you.

5 A. That's for the iPod Nano.

6 Q. Okay. And then there's another purchase here, for \$299;
7 is that right?

8 A. Yes.

9 Q. And that is -- that's for what, sir?

10 A. That's for an iPhone.

11 Q. Right. And those two purchases, those two devices, were
12 made by you; is that right?

13 A. No. I purchased the iPhone.

14 Q. Well, this is a single transaction; is that true, sir?

15 A. Yes, it is a single transaction.

16 Q. And let's look down below here, okay. Do you see here the
17 total, "\$557.33"? Is that right?

18 A. Yes.

19 Q. Okay. And you see here that there was a portion, a
20 portion of the balance that was -- that was made or paid with
21 your credit card; is that right?

22 A. Yes.

23 Q. Yes?

24 A. Yes.

25 Q. Okay. And here on the second page of this receipt here

1 we've got total tendered by you of \$557.33; is that right?

2 **A.** Yes.

3 **Q.** Okay. All right. Now, as Counsel, Mr. Getz, has gone
4 over -- and I'm not going to go over that with you, all of this
5 testimony with you again.

6 But you had available to you all of the police reports,
7 all of what we call the discovery in this case for the last
8 several months; isn't that right?

9 **A.** Yes.

10 **Q.** All right. And you had available to you, for example, the
11 discovery or the statements made by Daisy Bram, who was
12 mentioned by you yesterday and today; is that right?

13 **A.** Yes.

14 **Q.** And you saw, presumably, or became aware of Daisy Bram's
15 statement that stated that you, and you alone, gave the
16 marijuana from UPS to Daisy and Jayme?

17 **MR. HEMANN:** Objection, Your Honor.

18 **BY MS. CAFFESE:**

19 **Q.** True statement?

20 **MR. HEMANN:** It's hearsay and it's improper.

21 **THE COURT:** Sustained. The jury is admonished to
22 disregard the question.

23 **BY MS. CAFFESE:**

24 **Q.** You were aware of all of the statements that have been
25 made in this case; is that right?

1 **A.** I had access to it. As to being aware of all the
2 statements, no.

3 **Q.** No?

4 **A.** Because there were hundreds and hundreds of pages that
5 were filed in this case. So I have not looked through every
6 single page. Not at all.

7 **Q.** Well, you certainly were given, presumably -- well, were
8 you given police reports by the government to review?

9 **A.** I was not.

10 **Q.** Were you given information through your attorney,
11 information that was made available to him through the course
12 of this litigation?

13 **A.** During our meetings we discussed information. But in
14 terms of me, like, holding on tangibly to the papers, no.

15 **Q.** Well, when you were interviewed by the government back on
16 October 20th and 21st, for the first time, at no point in that
17 interview did you say that Officer Robles was present when you
18 handed the marijuana to Daisy Bram and Jayme Walsh. True
19 statement?

20 **MR. HEMANN:** Objection, Your Honor. Foundation and
21 relevance.

22 **THE COURT:** Well, I guess the question -- as I
23 understand the question, the question is: Did you ever tell
24 the government that Mr. Robles was present at the time the
25 marijuana was given to Daisy Bram?

1 Is that your question?

2 **MS. CAFFESE:** Yes.

3 **THE COURT:** Did you ever tell the government that?

4 That's a fair question.

5 **MS. CAFFESE:** On October 20th and 21st.

6 **THE COURT:** Wait. Is your question: Did he ever tell
7 the government? Did he tell the government on that date? Did
8 he tell the government on another date?

9 **MS. CAFFESE:** I'm going to get to that, Your Honor.

10 **THE COURT:** Well, I don't know that getting to that --
11 I don't know that -- well, you can ask the witness if he
12 remembers everything that he said to the government on October
13 whatever that date is.

14 And if the answer is yes or no, or whatever it is, you can
15 give him a document, if it refreshes his recollection or what.

16 Can I ask, how long were you with the government on --
17 what date is this?

18 **MS. CAFFESE:** There's one report.

19 **THE COURT:** What date?

20 **MS. CAFFESE:** October 20th to October 21st.

21 **THE COURT:** How long did you meet with the government
22 on October 20th or whatever date that was? How long did you
23 meet with them?

24 **THE WITNESS:** I don't recall how many hours, but I'm
25 sure -- all of our meetings have been several hours. Sometimes

1 as short as three or four; sometimes eight or nine.

2 **THE COURT:** I think you have to be more specific --

3 **MS. CAFFESE:** All right.

4 **THE COURT:** -- in your questions.

5 **BY MS. CAFFESE:**

6 **Q.** On October 20th, 2014, did you ever tell the government
7 that Officer Robles was with you when you gave the marijuana to
8 Daisy Bram and Jayme Stewart [sic]?

9 **A.** I don't recall.

10 **Q.** On October 21st, 2014, when you were with the government,
11 did you ever tell them that Officer Robles was with you when
12 you gave the marijuana to Daisy Bram and Jayme Stewart?

13 **A.** I don't recall.

14 **Q.** Would it refresh your recollection if I gave you a copy of
15 the report regarding those interviews with the government?

16 **A.** Yes.

17 **Q.** Page 4.

18 **A.** (Witness reviewing document.)

19 **Q.** Did reading this paragraph here refresh your recollection?

20 **A.** Yes. It does not appear that I mentioned it then.

21 **MS. CAFFESE:** Excuse me. Thank you. It was "Jayme
22 Walsh" not "Jayme Stewart."

23 **BY MS. CAFFESE:**

24 **Q.** Now, you pled guilty in this case on October 21st, 2014.

25 Am I correct? Excuse me, not pled guilty. You entered -- you

1 signed a plea agreement?

2 **A.** I think I did both, but yes.

3 **MS. CAFFESE:** I'm sorry. Is the plea agreement in
4 evidence?

5 **MR. HEMANN:** I don't believe it is, Your Honor. It
6 was shown to the witness by Mr. Getz, but not moved into
7 evidence.

8 **MS. CAFFESE:** Did you want to move it into --

9 **THE COURT:** It's up to the defense.

10 **MR. HEMANN:** We have no objection if the defense
11 wishes to do so, Your Honor.

12 **THE COURT:** Do you want it introduced into evidence?

13 **MS. CAFFESE:** Yes.

14 **THE COURT:** Yes. Okay.

15 **MR. HEMANN:** No objection, Your Honor.

16 **THE COURT:** Exhibit next in order.

17 (Trial Exhibit 351 received in evidence.)

18 **BY MS. CAFFESE:**

19 **Q.** There is a date of October 21st, 2014; is that right? Do
20 you have it there, sir?

21 **A.** Filed October 21st, yes.

22 **Q.** Right. And this is your plea agreement that we're looking
23 at, that you're looking at; is that right?

24 **A.** If it's the same, yes.

25 **Q.** Let's make sure it's the same.

1 Same one; isn't it?

2 **A.** Yes.

3 **Q.** And that was the date you pled guilty; is that right?

4 **A.** Yes.

5 **Q.** And I want to direct your attention to page 4 of that plea
6 agreement.

7 (Document displayed.)

8 **Q.** I'm going to be referring here to line 5. You see it on
9 line 5; right?

10 **A.** Yes.

11 **Q.** Okay. And in that paragraph there you're talking about --
12 the "I" is you; is that right?

13 **A.** That's correct.

14 **Q.** And you said you provided Daisy Bram and Jayme Walsh with
15 a quantity of marijuana; is that right?

16 **A.** Yes.

17 **Q.** All right. And you refer that's the marijuana that you,
18 Furminger, Robles obtained from UPS; is that right?

19 **A.** Yes.

20 **Q.** And it goes on to say that you had given Daisy Bram and
21 Jayme Walsh the marijuana; is that right?

22 **A.** Yes.

23 **Q.** And it was at the time you were attempting to enlist
24 Daisy Bram and Jayme Walsh as confidential informants; is that
25 right?

1 **A.** Yes.

2 **Q.** And then the next sentence, or the sentence after that one
3 following it, reads:

4 "Robles, D.B. and J.W. were aware of and agreed to
5 the plan..."

6 And the word is -- the word "before" is crossed out;
7 right?

8 **A.** Yes.

9 **Q.** And inserted or right above it reads -- you wrote in "at
10 the time" --

11 **A.** Yes.

12 **Q.** -- "I gave the marijuana to D.B. and J.W."; is that right?

13 **A.** Yes.

14 **Q.** So you didn't say that Robles was standing right next to
15 you, in your plea agreement, when you signed this on
16 October 21st --

17 **THE COURT:** The plea agreement speaks for itself. It
18 says what it says.

19 **BY MS. CAFFESE:**

20 **Q.** You had the opportunity to write and correct anything you
21 needed to correct in your plea agreement at that time, sir;
22 isn't that true?

23 **A.** Yes.

24 **Q.** Okay. And now we come to court and under oath you say
25 that Officer Robles was with you when you were giving this

1 marijuana to Daisy Bram and Jayme Walsh as they were going out
2 the front door of Mission Station; isn't that right?

3 **A.** I would call it the back door, but yes.

4 **Q.** Well, today -- correct me if I'm wrong, but did you say
5 the front door?

6 **A.** I don't believe I ever said the front door. I considered
7 the front door the entrance on Valencia Street. And that was
8 not the entrance that we -- that Mr. Robles and I handed the
9 marijuana to them.

10 **Q.** Well, before you were coming to court you were interviewed
11 again on October 27th; is that right?

12 **A.** Yes.

13 **Q.** All right. And when you were interviewed on October 27th,
14 as your trial testimony was approaching, you stated in that --
15 at that time, to the government, that Ed Robles was standing,
16 quote, "right next to me." Isn't that true?

17 **A.** Yes.

18 **Q.** All right. So, essentially, we have three different
19 versions --

20 **THE COURT:** Well, that's argumentative. That's
21 argumentative. Stop it now.

22 **MS. CAFFESE:** All right. Excuse me.

23 **THE COURT:** That's argumentative.

24 **MS. CAFFESE:** All right. Very well.

25

1 **BY MS. CAFFESE:**

2 **Q.** Now, if I'm correct, sir, you said that you had asked -- I
3 believe, at the time that this marijuana was seized, you had
4 asked the UPS or was it -- somehow you found out or believed to
5 believe -- believe that this marijuana was worth \$20,000 on the
6 streets; is that right?

7 **A.** I don't know where -- where that number has come from. I
8 have no idea.

9 **Q.** Well, you tell me. At some point did you become aware of
10 how much money this marijuana was worth?

11 **THE COURT:** When you say "this marijuana," are you
12 referring to the entire package of marijuana which was seized
13 from UPS? Are you referring to smaller quantities? What are
14 you referring to?

15 **BY MS. CAFFESE:**

16 **Q.** The marijuana that was -- that you gave -- that you gave
17 Daisy Bram and Jayme Walsh was part of the seizure from -- from
18 the UPS; is that right?

19 **A.** Yes.

20 **Q.** Okay. And that was back in March of '09; is that right?

21 **A.** Yes.

22 **Q.** Okay. And did you know how much money or how much the
23 marijuana that was -- let me back up, actually.

24 The marijuana that you gave Daisy Bram and Jayme Walsh,
25 did you know what the street value of that marijuana was worth?

1 **A.** No.

2 **Q.** No idea?

3 **A.** Uhm, a general idea, but not a specific idea, no.

4 **Q.** What's the general idea?

5 **A.** Anywhere from under a thousand dollars to maybe even up to
6 \$2,000, depending on the quality and quantity, and also
7 depending on how, ultimately, it would be sold. Sold as bulk
8 it would be much cheaper than breaking it down into smaller
9 amounts. So those amounts could even climb higher.

10 **Q.** So it was worth some amount of pretty good money; is that
11 right?

12 **A.** Yes.

13 **Q.** At least pretty near the sum of money you had stolen from
14 people such as Andrew Byrd; is that right?

15 **A.** Just depends.

16 **Q.** So Officer Robles just -- according to your testimony
17 today in court -- just agreed to give it away, give it away to
18 Daisy Bram and Jayme Walsh?

19 **A.** Well, as I said, that was really my decision. I said that
20 Officer Robles was there at the time. And that's specifically
21 why it says in the plea agreement "at the time." I was the
22 person that brought this up to their attention, and said
23 before -- the word "before" was incorrect. He wasn't aware of
24 it before. He was aware of it at the time as I handed it to
25 them.

1 Q. Well, why didn't you bring this up to the government's
2 attention when you talked to them on October 20th, that Officer
3 Robles was there at the time? Why didn't you bring it up then,
4 on October 20th?

5 A. I don't know.

6 Q. Why didn't you bring it up on October 21st?

7 A. I still don't know.

8 Q. All right. And why didn't you bring it up in your plea
9 agreement to say that he was, quote, standing right next to me?

10 A. That is why this change is there. That was literally
11 describing that.

12 Q. Well, that plea agreement does not have Officer Robles
13 standing right next to you, sir; does it?

14 A. It doesn't say that verbatim, no.

15 Q. No, it doesn't.

16 So my question to you is: Do you have any idea why
17 Officer Robles -- because you didn't really know him very well;
18 right? -- would just have this faith in you and just say, yeah,
19 let's just give the kids some marijuana that might be worth a
20 thousand or \$2,000? Any idea of why he would do that?

21 A. I don't. You'd have to ask him.

22 Q. Now, you said that Officer Robles, and I believe you said
23 Sergeant Furminger, took a leap of faith in you. Is that
24 right?

25 A. I don't believe I ever said that.

1 Q. Did you say it in your 302s, in your reports?

2 A. What's a 302?

3 Q. Did you make those statements to the government when you
4 were interviewed?

5 A. In terms of basically including the -- in the thefts, yes.

6 Q. Right. And why, since you've been testifying to, you
7 know, all these -- Officer Robles' motives, and what have you,
8 why would Officer Robles, and not even knowing you, just start
9 giving you money and bringing you in to start committing crimes
10 with him?

11 MR. HEMANN: Objection. Argumentative and
12 speculation.

13 THE COURT: Sustained.

14 BY MS. CAFFESE:

15 Q. Well, you had never worked with Officer Robles; had you?

16 A. No.

17 Q. And, in fact, as you said, you didn't really know him that
18 well; is that right?

19 A. Not in the beginning, no.

20 Q. And the only reason he had to work with you is because his
21 partner, Officer Zachos, had left on disability for a while; is
22 that right?

23 A. That's my recollection of what happened, yes.

24 Q. All right. You had no idea, no plan, when you stole --
25 when you stole the marijuana, is that right, no plans what to

1 do with the marijuana?

2 **A.** When I didn't book it in, no, I don't recall having any
3 kind of plan.

4 **Q.** No. Were you going to smoke it?

5 **A.** I don't smoke marijuana.

6 **Q.** Were you going to sell it, yourself?

7 **A.** No.

8 **Q.** Were you going to have -- I don't know -- somebody sell it
9 for you?

10 **A.** No.

11 **Q.** These are questions you've asked yourself many times; is
12 that right?

13 **A.** I think I asked myself slightly different questions than
14 that.

15 **Q.** When Daisy got out of the hospital, you said that she was
16 better off, better off than when you first met her. Was that
17 your testimony?

18 **A.** Than we initially met her, yes, minus the -- of course,
19 she still had a very wounded hand. But in terms of being,
20 like, kind of clean and that sort of thing, and well/regularly
21 fed and that sort of stuff, yes.

22 **Q.** And just like Kelsey Stewart, you felt sorry for her;
23 right?

24 **A.** We felt sorry for both of them. I felt sorry for both of
25 them.

1 Q. So the answer to my question is, yes, you felt sorry.
2 Just like Kelsey Stewart, the woman you took out on a couple of
3 dates, and texts, and pursued romantically, you felt sorry for
4 Daisy; is that right, sir?

5 MR. HEMANN: Objection. Argumentative.

6 THE COURT: Sustained.

7 BY MS. CAFFESE:

8 Q. Let's talk about Sergio, Sergio for a moment, sir. Sergio
9 the fence you were talking about.

10 A. Yes.

11 Q. Sergio Sanchez.

12 Now, you've isolated your business, or I believe your
13 testimony was that --

14 THE COURT: Wait. I'm sorry. I don't want to
15 interrupt you at an inopportune time, but I do want to take a
16 recess, unless you're --

17 MS. CAFFESE: No, this is another subject matter.

18 THE COURT: Okay. Ladies and gentlemen of the jury,
19 we will take our recess now. We will be in a brief recess. We
20 will take a 10-minute recess, 10 or 12 minute recess.

21 Remember the admonition given. Don't discuss the case;
22 allow anyone discuss it with you; form or express an opinion.

23 (Jury out at 2:33 p.m.)

24 THE COURT: You can step down.

25 (The following proceedings were held outside of the

1 presence of the Jury)

2 **THE COURT:** Okay. Let the Record reflect that the
3 jurors have retired.

4 Mr. Hemann.

5 **MR. HEMANN:** So there's a -- a slight matter that we
6 want to raise with the Court. One of the FBI agents observed
7 earlier in the day today, I think, after the first morning
8 break, that as one of the jurors came in -- and I believe it
9 was -- I believe it was this -- this -- (Indicating)

10 **THE COURT:** Well, we had better get an identification.
11 Juror Number --

12 **MR. HEMANN:** I can't remember how to count the -- one,
13 two, three, four --9.

14 **THE COURT:** Juror No. 9, the third seat from the end,
15 from where I'm sitting.

16 **MR. HEMANN:** Yes. The FBI agent observed that he
17 smiled broadly and slightly nodded his head to somebody in the
18 gallery. And, again, the agent's observation wasn't definitive
19 in terms of the person or even whether it was something more
20 than a hello, maybe to a lawyer or party or something. But,
21 that was the observation.

22 I don't -- I raise it to the Court's attention. The
23 gallery was very crowded at the time. I'm slightly concerned
24 that the juror saw somebody in the courtroom that he or she
25 knows, and whether -- that he knows and was acknowledging that.

1 I think our request would be, to the jurors as a whole, that
2 the Court say, "I'm just checking in, see whether there --
3 there have been a lot of people in the courtroom. Have any of
4 the jurors recognized anybody in -- in the courtroom in the
5 gallery?" without being specific to this juror, and sort of
6 play it off as a check-in.

7 We debated whether we should raise it at all but we
8 thought, given that the observation showed some perceived level
9 of familiarity --

10 **THE COURT:** I'm not so sure that is a good idea. I
11 mean, I see people -- other than lawyers whom I know, like your
12 office and some defense lawyers, there are members of the press
13 who I also know who are here, both from the print media and
14 television media. So, and of course, TV media, people are
15 fairly well known, or can be.

16 So, I don't know whether I want to start --

17 **MR. BRASS:** Your Honor?

18 **THE COURT:** Go ahead, come on up.

19 **MR. BRASS:** It's me. I know one of the jurors. So if
20 that solves the issue --

21 **THE COURT:** Why don't you come up. Great.

22 **MR. HEMANN:** Ladies and gentlemen, Tony Brass.

23 **THE COURT:** Hello, Mr. Brass.

24 **MR. BRASS:** Good afternoon, Your Honor.

25 **THE COURT:** So, tell me, what's the story?

1 **MR. BRASS:** That juror, his son attends school with my
2 youngest son. So we know each other from different school
3 events and things like that.

4 **THE COURT:** Okay. And have you -- do you have any
5 connection with this case?

6 **MR. BRASS:** I do.

7 **THE COURT:** Have you -- when I say "this case" --
8 everybody can sit down.

9 When I say "this case," I'm now talking about these three
10 Defendants? Or witnesses?

11 **MR. BRASS:** Yes.

12 **THE COURT:** You have some connection.

13 **MR. BRASS:** I do. I represented Bernadette Melvin in
14 this case. She testified earlier.

15 **THE COURT:** Well, but she was also a person who was
16 known to a juror. Isn't that correct?

17 **MS. CAFFESE:** That's right. Juror No. 1.

18 **THE COURT:** But that was Juror No. 1.

19 **MR. HEMANN:** Correct.

20 **THE COURT:** Okay. Have you discussed the case with
21 anyone? I don't mean -- of course you discussed the case.
22 Have you discussed it with that juror or any member of the
23 juror's family?

24 **MR. BRASS:** Not at all. That juror and I hardly know
25 each other. But, we do know each other.

1 **THE COURT:** And do you know whether he knows that you
2 represent one of the witnesses in this case?

3 **MR. BRASS:** I have no idea if he knows. As I recall,
4 Ms. Melvin testified, and although the fact that she was
5 represented was brought up, who represented her was not brought
6 up.

7 **THE COURT:** That's right.

8 **MR. BRASS:** I was here, but I didn't see him.

9 **THE COURT:** All right. So I'm going to leave it
10 alone, entirely. And, tell you to leave the courtroom.

11 **MR. BRASS:** Understood.

12 **THE COURT:** And not --

13 **MR. BRASS:** I'll take that as an invitation to leave
14 the courtroom, which I will do so.

15 **THE COURT:** Okay, thank you.

16 **MR. HEMANN:** Thank you, Your Honor.

17 **MR. BRASS:** Thank you, Your Honor.

18 **MR. HEMANN:** Thanks, Tony.

19 (Recess taken from 2:38 to 2:46 p.m.)

20 (The following proceedings were held in open court,
21 outside the presence and hearing of the jury.)

22 **THE COURT:** I don't want to prevent you from doing
23 your job. If you're here to listen to the testimony in
24 connection with your client, then obviously you can stay.

25 But if you're here just because you are interested in the

1 case, from -- from a pedagogical point of view, I think it is
2 better that you don't.

3 **MR. BRASS:** I believe -- I'm here because I think it
4 assists me in doing my job.

5 **THE COURT:** Well, then stay. And, I think I'll just
6 caution the jurors not to have any contact, you know, okay?

7 **MR. BRASS:** That's fine, Your Honor.

8 **THE COURT:** Okay. That's fine. The last thing -- I
9 mean, I can't keep you out; I'm not keeping you out. Okay.

10 **MR. HEMANN:** And Your Honor, just from --

11 **THE COURT:** Yeah, go ahead.

12 **MR. HEMANN:** -- a timekeeping perspective, I think
13 that Ms. Caffese indicated she's got about another hour, I
14 think.

15 **THE COURT:** Another hour? You need another hour?

16 **MS. CAFFESE:** Yeah; you're surprised?

17 **THE COURT:** Yeah, I'm a little surprised.

18 **MS. CAFFESE:** Oh.

19 **THE COURT:** Well, maybe not. I thought -- well, you
20 have what you have. I mean, you have what you have.

21 **MS. CAFFESE:** Well, I think it's --

22 **THE COURT:** You have what you have.

23 **MS. CAFFESE:** Okay.

24 **THE COURT:** I'm not cutting you off cross-examination.

25 **MR. HEMANN:** So, if we --

1 **THE COURT:** Well, you have redirect, if you have any.

2 **MR. HEMANN:** And then I would say about ten minutes of
3 redirect.

4 **THE COURT:** (Inaudible)

5 **MR. HEMANN:** So we may be within -- looks like we will
6 be within ten minutes of 4:00, plus or minus.

7 **THE COURT:** Yeah, that's fine.

8 **MR. HEMANN:** Okay.

9 **THE COURT:** Bring in the jury.

10 **THE CLERK:** All rise.

11 (The following proceedings were held in the presence of
12 the Jury)

13 **THE COURT:** Please be seated.

14 Let the Record reflect that all jurors are present. All
15 parties are present.

16 Ladies and gentlemen, as I'm sure you can tell, people
17 have been coming in and out of the courtroom, sitting in the --
18 the spectators' section, with some frequency.

19 It may occur that you can recognize some people; maybe you
20 know them, maybe you know of them. And again, I just simply
21 want to caution you, that's okay. That's not a problem.

22 But, of course, don't discuss the case with anyone that
23 you may know or feel you recognize. Just, you know, obviously,
24 don't discuss it with your family, friends or anyone else.

25 We have proceeded a long way down in this trial. We have

1 heard a lot of testimony. We have a ways to go, but we are
2 moving very, very quickly, given the schedules. And I will
3 have more to say about that today, and also next week.

4 You know we are meeting Monday and Tuesday of next week.
5 But not Wednesday. So, anyway, just remember the admonition
6 given to you.

7 And Ms. Caffese, you may continue.

8 **MS. CAFFESE:** Thank you, Your Honor.

9 **CROSS-EXAMINATION RESUMED**

10 **BY MS. CAFFESE:**

11 **Q** Sir, you had a separate relationship with Sergio Sanchez.
12 Is that right?

13 **A** I had a relationship with Sergio Sanchez, yes.

14 **Q** And you isolated your, quote, business relationship
15 (Indicating quotation marks) from the other officers, is that
16 right?

17 **A** Yes.

18 **Q** You went to him individually, separate -- individually, is
19 that right?

20 **A** Yes.

21 **Q** All right. And, what you did is you would give him stolen
22 things to sell. Is that right?

23 **A** On occasion I did, yes.

24 **Q** You were using him to sell stolen items. Isn't that
25 right?

1 **A** Yes.

2 **Q** And that conduct was obviously illegal because you knew
3 that the things that you were giving him were stolen. Right?

4 **A** Yes.

5 **Q** Now, you testified about a laptop that was -- was taken,
6 or was seized at some point in an investigation that led to the
7 arrest of somebody who was possessing child pornography. Is
8 that right?

9 **A** I --

10 **Q** Do you remember the laptop that you talked about, and the
11 laptop had child pornography on it?

12 **A** With respect to -- actually, I don't know if that was ever
13 confirmed.

14 **Q** What was ever confirmed?

15 **A** I'm sorry; I don't know what you are speaking of.

16 **THE COURT:** Well, I think the confusion is that a
17 laptop was seized, in which there was a suggestion that the --
18 one of the participants in the movie was underage. If so, that
19 would be child pornography.

20 What the witness has said is what he said.

21 **MS. CAFFESE:** Actually, I'm not --

22 **THE COURT:** Are you referring to that incident?

23 **MS. CAFFESE:** No, I'm not, actually.

24 **THE COURT:** Because we have a number of laptops.

25 **MS. CAFFESE:** Right.

1 **THE COURT:** Okay.

2 **BY MS. CAFFESE:**

3 **Q** There was an incident where you obtained, or, actually,
4 Officer Robles obtained a laptop which had child pornography on
5 it.

6 Is that right?

7 **A** You're talking about a totally separate incident? Yes, I
8 know which one you are talking about. Yes, you're correct.
9 Yes.

10 **Q** That was the incident which led to the arrest and the
11 conviction of Robert Stein. Is that right?

12 **A** Yes, I do recall so, yes.

13 **Q** And that was, I believe, December of 2009, if you --

14 **A** I don't remember the exact date, but that sounds very
15 close, yes.

16 **Q** All right. And, you stated under oath, in a search
17 warrant, that you had -- you had obtained that laptop in a
18 hotel room. Is that right?

19 **A** As I recall, I don't believe we said a hotel room. I
20 believe we said in like a common area of the hotel.

21 **MS. CAFFESE:** If I can show the witness what's been
22 Bates stamped B0-15-0037.

23 **BY MS. CAFFESE:**

24 **Q** Now, before I get actually to the affidavit, which you
25 signed, this was incident in which there was an Officer Valdez

1 who actually wrote the report.

2 Do you remember that?

3 **A** Yes.

4 **Q** Okay. And that was the report in which you, quote, took
5 over. Is that right? You said that you took over the control
6 of writing that report for Officer Valdez. Didn't you say
7 that?

8 **MR. HEMANN:** Objection to the -- foundation,
9 Your Honor, as to when or where he said what.

10 **THE COURT:** Sustained.

11 **BY MS. CAFFESE:**

12 **Q** Did you write -- did you assist an Officer Valdez in
13 writing a police report relating to the seizure of a laptop
14 that had child pornography on it in December of 2009?

15 **A** Did I assist him? Yes.

16 **Q** All right. And in fact, what you said was that you had
17 taken control over the writing of that report. Is that right?

18 **A** I don't recall saying that.

19 **Q** You don't recall telling the government that you took
20 control of the report from Officer Valdez when the report was
21 being written by him?

22 **MR. HEMANN:** Objection, foundation.

23 **THE COURT:** Sustained.

24 **BY MS. CAFFESE:**

25 **Q** Well, let me show you the police report and see if you

1 have a recollection.

2 **MS. CAFFESE:** I'm referring to Bates stamp --

3 **MR. HEMANN:** Objection, Your Honor. The witness has
4 not testified that he does not have a recollection of any of
5 this.

6 **THE COURT:** Sustained.

7 **BY MS. CAFFESE:**

8 **Q** Did you write an affidavit or did you sign an affidavit
9 which you prepared, where you said that the laptop was found --
10 that you noticed the laptop near a garage can adjacent to the
11 roof of stairs, in a hotel room? All right, a hotel?

12 **A** Yeah, that's not in a room. As I was saying, I believe I
13 stated it was in a common area. That's a common area of the
14 hotel, yes.

15 **Q** That was a lie, wasn't it?

16 **A** That is inaccurate, yes.

17 **Q** It's inaccurate. In fact, this search warrant, this
18 search warrant and affidavit -- and I'm going to show it to you
19 because I haven't done that yet, I'm going to ask you whether
20 or not that was a search warrant that you received after
21 writing the affidavit, was done by you.

22 (Witness examines document)

23 **A** Yes. I -- I did prepare this.

24 **Q** All right. And the date on that was December 8, 2009. Is
25 that right?

1 **A** That's what it says on there. I never saw the date.

2 **Q** And the evidence -- an affidavit, when you get a search
3 warrant, is signed under penalty of perjury. Is that right?

4 **A** Yes.

5 **Q** Okay. And, when you say it was inaccurate, that's because
6 there was a lie in this report. Is that right?

7 **A** Yes.

8 **Q** And the lie was that the laptop was actually given to
9 Officer Robles from Sergio Sanchez. True statement?

10 **A** That's true.

11 **Q** I'm going to show you a police report, Bates stamp
12 15-0004, and ask you whether or not you recognize this report,
13 sir.

14 (Witness examines document)

15 **A** Yeah, I recognize it.

16 **Q** I'm -- you kind of recognize it?

17 **A** I -- yes.

18 **Q** Yes. And in fact, that was the report in which you
19 actually wrote the narrative for an Officer Vasquez. Is that
20 right?

21 **A** No, I didn't write this narrative.

22 **Q** Why do you say that?

23 **A** I say that because I didn't.

24 **Q** Well, did you tell the government when you were
25 interviewing with them on October 20th, and/or the 21st, that

1 in fact, you did take control and wrote the narrative of that
2 report? For Officer Vasquez? Excuse me. Valdez.

3 **A** Yes. Officer Robles and myself had to greatly assist
4 Officer Valdez in writing this report because he, in writing --
5 or in attempting to write the report, he wrote Sergio into the
6 report. We were trying to isolate him away from the report.

7 We didn't believe -- you know, in terms of the source of
8 the laptop, we didn't think it was as important to talk about
9 where we got the laptop, as it was important to talk about what
10 was on the laptop and who, in fact, the laptop belonged to.

11 To us the importance was that there was what we believed
12 to be child pornography, and was, in fact, found to be child
13 pornography, and the person that we believed owned the laptop
14 did, in fact, own the laptop and was subsequently convicted of
15 possession of child pornography.

16 So, the detail of where we retrieved the laptop wasn't as
17 important to us on the scheme of things as to what was on it
18 and who it was owned by.

19 **Q** So, you did tell the government on October 20th, that you
20 took control and wrote the narrative. True statement?

21 **A** No, I don't believe I used those words.

22 **Q** Would it refresh your recollection if I showed you
23 anything, sir?

24 **A** Sure.

25 **MS. CAFFESE:** Well the Judge is shaking his head,

1 so --

2 **THE COURT:** Well, that's --

3 **MS. CAFFESE:** That's fine.

4 **THE COURT:** He testified that he didn't say that. So,
5 you can't give him a document and say -- he's not saying he
6 didn't have a recollection. He's saying he didn't say it.

7 **BY MS. CAFFESE:**

8 **Q** The report was false. Correct?

9 **A** The -- where the laptop -- the source of the laptop, yes.
10 That is absolutely false.

11 **Q** Right. And, certainly you write reports -- for example,
12 we've talked about some of the reports that you've written,
13 where in fact you say that you have come across certain
14 evidence, or you're doing a particular investigation based on
15 information that a confidential informant has given you.

16 Is that right?

17 **A** Yes.

18 **Q** So you certainly could have said, "Based on information a
19 confidential informant gave us, we seized a laptop which
20 contained pornography." True statement?

21 **A** That would have been one way to handle it, yes.

22 **Q** And you could have said the truth in your affidavit, when
23 you got the search warrant. True statement?

24 **A** Yes.

25 **Q** In February of 2010 you weren't working with Ed Robles,

1 were you?

2 **A** No, I don't believe so.

3 **Q** And when you went in to arrest a gentleman by the name of
4 Scotty Krasunik, you stole his laptop. Is that right?

5 **A** I don't remember a Scott Krasunik.

6 **Q** You didn't remember the 319 10th Street arrest back on
7 February 10, 2010?

8 **A** Right. No, I remember that location. I don't remember
9 that person.

10 **Q** All right. But do you remember that location; you
11 remember stealing an Apple laptop. Is that right?

12 **A** Yes.

13 **Q** And that was another crime of opportunity, is that your
14 testimony?

15 **A** Yes.

16 **Q** All right. And that was another, just a crime of
17 opportunity, even though there were many other officers
18 present, including Bucy, Emanuel, and O'Rourke.

19 Is that right?

20 (Reporter interruption)

21 **MS. CAFFESE:** O'Rourke. O-apostrophe-R-O-U-R-K-E.

22 **THE WITNESS:** Yes.

23 **BY MS. CAFFESE:**

24 **Q** Doesn't it make it more difficult to steal when you have
25 the presence of other officers on scene, sir?

1 **A** Yes. If I'm attempting to hide it from them, yes.

2 **Q** Right. So it is not really just a crime of opportunity.

3 Is that right?

4 **A** Well, I believe it is.

5 **Q** Well, you certainly didn't want -- or you wanted to be
6 sure that other officers didn't catch you during this crime of
7 opportunity, isn't that true?

8 **A** Yes.

9 **Q** And in fact, during this particular incident dating back
10 to February of 2010 at 319 10th Street, another officer there,
11 by the name of Officer Emanuel, actually discovered the suspect
12 you were supposed to be arresting hiding in an area that you
13 had just searched.

14 **A** Is that a question?

15 **Q** Yeah. It is.

16 **A** No, I don't believe that was a suspect. And I think
17 probably everybody in that search, including other police
18 agencies, that all searched that area, so we all missed him.
19 And he was in a -- I think, behind a wall for more than an
20 hour.

21 **Q** Do you remember the 245 Leavenworth arrest dealing with
22 Ever Cen and José Flores back on August 12th, again, 2010,
23 after you stopped working with Ed Robles?

24 **A** Yes.

25 **Q** Okay. And that was an incident in which Cesar had asked

1 you for a laptop from those premises. Is that right?

2 **A** Yes.

3 **Q** And in fact --

4 **MS. CAFFESE:** Do I have some (Inaudible) there?

5 (Off-the-Record discussion)

6 **MS. CAFFESE:** So, I'm going to be referring to Bates
7 stamp B009-0063.

8 **MR. HEMANN:** Okay.

9 **MS. CAFFESE:** Okay.

10 **BY MS. CAFFESE:**

11 **Q** Let me ask you: You actually had called Cesar Hernandez
12 -- well, let me put it this way.

13 You and Cesar Hernandez were actually talking that day
14 about the laptop, and what he wanted from the premises of 245
15 Leavenworth.

16 Is that right? Do you remember that?

17 **A** That was one of many things we were talking about, sure.

18 **Q** All right. And that's because you and Cesar were pretty,
19 pretty close. Close enough that if he wanted something from a
20 crime scene that you were going to steal, okay, okay with you.

21 Is that right?

22 **A** When Cesar often gave us -- including myself, Mr. Robles
23 and Mr. Furminger -- targets, he often gave us the target, and
24 included a shopping list with it. "I want this out of this.
25 If he has this much money, give me this much."

1 He often was very specific in terms of his demands of
2 compensation for any of the individuals that he -- he provided
3 information against.

4 **Q** And, with -- let's talk about Moreno. I think, was that
5 Carlos Duanes, otherwise known as Carlos Duanes?

6 **A** I know him as "Moreno," yes.

7 **Q** So you set this up, my understanding is that this was a
8 heroin buy, you sent Cesar to buy some heroin from Moreno on
9 credit. Is that right?

10 **A** He was provided heroin on credit, yes.

11 **Q** Right. And then, you went to some length to talk about
12 how you were going to give -- Cesar was going pay the money
13 back, and then you were going to follow Moreno to see where he
14 was going to go bury the money in Golden Gate Park.

15 Is that right?

16 **A** Yes.

17 **Q** Why did you have to go through all that? Why not just
18 follow Duanes?

19 **MR. HEMANN:** Objection.

20 **MS. CAFFESE:** Moreno.

21 **MR. HEMANN:** Withdrawn, Your Honor.

22 **MS. CAFFESE:** Excuse me.

23 **BY MS. CAFFESE:**

24 **Q** Why didn't you just follow him?

25 **A** We did follow him.

1 Q Yeah, but why did you have to set up this whole thing
2 about, you know, giving the credit to Moreno, giving heroin to
3 Hernandez on credit, and then going back and giving Moreno the
4 money?

5 Why not just follow him from the onset?

6 A Because, as I kind of explained earlier, he was -- he was
7 pretty sophisticated and very knowledgeable. This is a guy
8 who's been dealing narcotics for many, many years, and just not
9 been arrested very much. That's for a reason. That kind of
10 speaks to his skill level.

11 Q Uh-huh.

12 A Also, our intention by providing him with a sizable amount
13 of money is more money than he would be able to walk around
14 with. Hopefully, that would necessitate him going to his
15 locations where he would bury his money.

16 Q Right. And this would be in Golden Gate Park, right?

17 A Right.

18 Q So this really sophisticated big drug dealer would bury
19 money through Golden Gate Park. Right?

20 A Right.

21 Q And you followed him one night, with Cesar, right? Cesar
22 came along, right?

23 A I believe it was -- it was pretty early morning. Daytime.

24 Q This was a field trip that you took Cesar along with you
25 to do. Is that right?

1 **A** Well, we facilitated that exchange, and then, and then
2 tried to follow him to that area, yes. I wouldn't characterize
3 it as a field trip.

4 **Q** Why did you need -- did you need Cesar?

5 **A** Because Cesar was a component of the transaction.

6 **Q** That's why you needed Cesar, to follow him?

7 **A** Yes. For that specific instance, yes.

8 **Q** And -- okay. You could have followed Moreno without
9 Cesar, too, is that right?

10 **A** Sure, at any point, but he would probably see that
11 undercover police officers were following him and not handle
12 any transactions.

13 **Q** All right. Well, I guess if he bought the money -- if he
14 bought the heroin on credit, actually, and if it was part of
15 the transaction, there would have been no money that Moreno
16 had. If it happened as you said it did.

17 **A** I'm sorry; I don't understand what you mean by that.

18 **Q** Well, you said that you had to bring Cesar with you
19 because he was part of the transaction. Right?

20 **A** Let me try and explain it a little different way.

21 **Q** Let me ask you, okay? You just testified that you brought
22 Cesar with you after the deal went. Right?

23 **A** Yes. The conclusion of the deal. So, at an earlier time
24 -- I'll try and explain it to make it more clear.

25 At an earlier point, Cesar had been given narcotics to

1 sell on credit. So, after finishing selling that narcotics, or
2 actually coming short, and I believe Mr. Robles actually gave
3 him some money to complete the total transaction. He was going
4 to give that the lump sum of money back to Moreno.

5 It was at that point, with that lump sum of money, Moreno
6 wouldn't want to carry that money around. At least, that was
7 our thinking. He would then have to go to one of his places
8 where he buries his money.

9 That was the intention. To follow him back to those
10 locations where he buried his money and drugs.

11 Is that more clear?

12 **Q** He bought the heroin on credit. Is that right?

13 **A** Yes.

14 **Q** And do you have now some idea of how long it was after
15 Cesar bought the heroin on credit that you came back with the
16 money to give Moreno?

17 **A** I don't recall on that.

18 **Q** All right. Let's move on to -- I think it's Zaychenko?
19 Do you remember that arrest?

20 **A** Yes.

21 **Q** And you talked about it on your direct examination. But
22 one part that was left out was you testified that you stole
23 some things from a residence belonging to Zaychenko and his
24 girlfriend.

25 Is that right?

1 **A** Yes.

2 **Q** And the girlfriend had a probation search. Is that right?

3 **A** Yes.

4 **Q** Well, after you had arrested Zaychenko, he, Zaychenko,
5 called you. Is that right?

6 **A** No.

7 **Q** You had communications with Zaychenko after that arrest,
8 is that true?

9 **A** I did, yes.

10 **Q** And Zaychenko reported that his house that he shared with
11 his girlfriend had been burglarized. Is that right?

12 **A** Yes.

13 **Q** And as a result of -- and as a result of that complaint
14 that Zaychenko had made to you, you actually wrote a false
15 police report of the of the, quote, burglary that you actually
16 committed. True statement?

17 **A** Some of the items that were listed that were taken were,
18 in fact, taken by myself and Mr. Robles. But, not all of them,
19 no.

20 **Q** I'm going to show you a police report --

21 (Off-the-Record discussion between counsel)

22 **MS. CAFFESE:** Yeah, and I think it's Tab 6.

23 **MR. HEMANN:** Tab 6.

24 **MR. VILLAZOR:** 7. 7.

25 **MS. CAFFESE:** Oh, 7. Excuse me. Tab 7.

1 **BY MS. CAFFESE:**

2 **Q** After you actually stole things from Zaychenko's house,
3 you were brazen enough to actually write a police report saying
4 that the house had been burglarized.

5 True statement?

6 **A** I didn't say that. So, no. That's what Mr. Zaychenko
7 said. And I reported what he told me.

8 **Q** Right. And the person who actually stole from the house
9 was you. Right?

10 **A** I stole one of the items, yes, along with Mr. Robles, yes.

11 **Q** So is this report, and I'm going to show you, dated
12 September 16th, 2009, which was written by you, is a false
13 report.

14 **MR. HEMANN:** That is Exhibit 281 in evidence,
15 Your Honor.

16 **THE COURT:** Thank you.

17 (Witness examines document)

18 **BY MS. CAFFESE:**

19 **Q** True statement?

20 **A** Which -- I'm sorry; can you repeat the question?

21 **Q** False report. We are talking about a false report.

22 **A** Yes -- well, that the items are missing, no, that's not
23 false. And that some of the items listed on there were taken
24 by myself and Mr. Robles, that's true. But not all of those
25 items.

1 So, I don't know what happened to the other items. I
2 don't know if his place was, in fact, burglarized.

3 **Q** You enjoyed writing police reports. That was your
4 testimony on direct examination, right?

5 **A** Sure.

6 **Q** You said you were actually pretty good at writing police
7 reports. Isn't that what you said, sir?

8 **A** That's my belief.

9 **Q** And is the part that you liked the most about writing your
10 pretty good police reports, was that you could lie in them?

11 **MR. HEMANN:** Objection, argumentative.

12 **THE COURT:** Sustained.

13 **BY MS. CAFFESE:**

14 **Q** What parts about writing these police reports did you
15 enjoy so much, sir?

16 **A** The act, themselves, becomes a bit formulaic especially as
17 you are doing the same report over and over. I just thought I
18 wrote a good police report. That was my opinion.

19 **Q** And you liked the fact that it was formulaic?

20 **A** No, that's not a part I liked.

21 **Q** But that was kind of what you did in your police reports?

22 **A** In -- in what sense?

23 **Q** I don't know. You tell me. Was it? I don't know.

24 **MR. HEMANN:** Objection, Your Honor, argumentative.

25 **THE COURT:** Sustained.

1 **BY MS. CAFFESE:**

2 **Q** Did you enjoy writing the burglary report after you stole
3 from Mr. Zaychenko, sir?

4 **MR. HEMANN:** Objection, relevance.

5 **THE COURT:** Argumentative.

6 **MS. CAFFESE:** Okay.

7 **BY MS. CAFFESE:**

8 **Q** Well, there was some hotel videos you mentioned were
9 released by the Public Defender's Office. Is that right?

10 **A** Yes.

11 **Q** And actually one of them was a -- an incident on
12 December 30th, 2010, Jefferson Hotel, involving a Fernando
13 Santana. Is that right?

14 **A** Yes.

15 **Q** And that's where you were accused of planting drugs on
16 Mr. Santana, is that right?

17 **A** I don't know exactly what, if anything, we were accused
18 of.

19 **Q** Okay. Well, you gave Cesar a bottle of tequila stolen in
20 that search. Is that right? Remember that?

21 **A** No, I do not.

22 **Q** Well, back on December 30th of 2010, Officer Robles wasn't
23 working with you, was he?

24 **A** No.

25 **Q** And when you were caught on video at the Julian Hotel in

1 2011, carrying a bag out of that hotel, Officer Robles wasn't
2 working with you, was he?

3 **A** No.

4 **Q** And that's when you actually -- that's when you actually
5 left the department. Is that right?

6 **A** No.

7 **Q** No. Were you still working in plainclothes?

8 **A** For a short time after that, yes.

9 **Q** You were taken out of plainclothes, though, is that right?

10 **A** Um, yes. I believe they pretty much deactivated several
11 units due to those videos.

12 **Q** Right. You. You. We're just talking to you. You went
13 out of plainclothes, is that right?

14 **MR. HEMANN:** Objection, Your Honor; argumentative. He
15 answered the question fairly.

16 **THE COURT:** Asked and answered.

17 **BY MS. CAFFESE:**

18 **Q** And when Cesar Hernandez called you in August of 2011 to
19 tell you that Officer -- I think it was Duarte was
20 investigating you, you spoke with Cesar. Right?

21 **A** Yes.

22 **Q** And you asked Cesar, "Tell me what they want to know," is
23 that right?

24 **A** No, I don't believe I asked him that.

25 **Q** You told him, "Better watch out," warned him, "You can get

1 a lawyer too; you can get a lot people in trouble."

2 Remember having that conversation with Cesar?

3 **A** I don't remember saying that to him, either.

4 **Q** You certainly felt comfortable enough to be talking with
5 Cesar, your friend, about what the authorities were after, as
6 it related to you, sir. True statement?

7 **A** No.

8 **Q** All right. Now, you testified --

9 **MS. CAFFESE:** And I'm almost done, Your Honor.

10 **BY MS. CAFFESE:**

11 **Q** You testified that after you took this money from Newark,
12 and it was a long conversation that you testified that you had
13 with Officer Robles and Sergeant Furminger on the way over to
14 Newark, that when you took the money, you put it in the trunk
15 of the vehicle.

16 That's what you told the government when you interviewed
17 with them on October 20th, 2014. Is that right?

18 **A** I don't believe that's correct.

19 **Q** Well, can I show it and see if you remember saying that to
20 the government?

21 **MR. HEMANN:** Objection. Foundation, Your Honor.

22 **THE COURT:** Sustained.

23 **BY MS. CAFFESE:**

24 **Q** You also testified here, about what y'all were going to do
25 with the money. Right? Remember that?

1 **A** Yes.

2 **Q** You told the government on October 20th, 2014, isn't it
3 true that you said Robles was going to purchase a motorcycle?

4 **A** No, I don't believe I said that at all.

5 **Q** All right. Well, do you think you might have forgotten
6 what you told the government back on October 20th, about what
7 Robles allegedly told you?

8 **A** Not at all. Because I know explicitly what he was looking
9 for. So maybe the word "bike" got misinterpreted as
10 "motorcycle," but I know he was looking for a road bike.

11 **Q** And you really wanted that bicycle, right?

12 **A** Yes. It's a great bike.

13 **Q** In fact, that was part of the highlight of your
14 examination. You were really excited when you were talking
15 about this expensive bicycle that Robles sold you.

16 Is that right?

17 **MR. HEMANN:** Objection, Your Honor.

18 **THE COURT:** Sustained.

19 **BY MS. CAFFESE:**

20 **Q** And you eventually got what you wanted. Right? You got
21 that bicycle that you were so excited about.

22 Is that right?

23 **A** Yeah, probably six or eight months down the line, yes.
24 When he chose to sell it to me, yes.

25 **Q** Now, when you pled guilty, when you pled guilty back on

1 October 21st, 2014, right before we were about to go to trial
2 in this case, your lawyer -- let me give you your plea
3 agreement.

4 **A** I've still got a copy here.

5 **Q** All right. So, a lot of pages to this, but your lawyer
6 was doing a lot of talking here.

7 Is that right?

8 **THE COURT:** I'm sorry; what?

9 **BY MS. CAFFESE:**

10 **Q** Your lawyer was talking, the Court --

11 **THE COURT:** "A lot of talking," I don't know what that
12 means. Okay.

13 **MR. HEMANN:** (Inaudible) the transcript.

14 **MS. CAFFESE:** The transcript --

15 **THE COURT:** A fair amount of talking, but I don't know
16 what that means.

17 **MS. CAFFESE:** All right.

18 **BY MS. CAFFESE:**

19 **Q** Your lawyer was talking on your behalf, is that right?

20 **A** Yes.

21 **MR. HEMANN:** I think Ms. Caffese is referring to
22 transcript of the plea colloquy.

23 **MS. CAFFESE:** Yes, I am. The plea. The plea --

24 **MR. HEMANN:** I don't believe that Mister --

25 **MS. CAFFESE:** Oh, you don't have that. I'm sorry.

1 **MR. HEMANN:** There's a disconnect, Your Honor.

2 **THE WITNESS:** I only have the plea agreement.

3 **THE COURT:** Yeah, the plea agreement, but not the
4 colloquy.

5 **MS. CAFFESE:** I'm sorry. I thought you had it.
6 Sorry, sorry.

7 **BY MS. CAFFESE:**

8 **Q** Here's a transcript of your plea here (Indicating).

9 **MS. CAFFESE:** Has that been marked and introduced?

10 **MR. HEMANN:** No.

11 **MS. CAFFESE:** All right. Well, let me just mark it.
12 Perhaps we can mark it later as an exhibit if we need to.

13 **THE COURT:** Exhibit next in order.

14 **MS. CAFFESE:** Thank you.

15 **THE COURT:** For identification.

16 **BY MS. CAFFESE:**

17 **Q** So, this transcript of your plea back on October, 21st,
18 you indicated you wanted to apologize, right?

19 **MR. HEMANN:** Objection, Your Honor. This is hearsay.
20 And --

21 **THE COURT:** Well --

22 **MR. HEMANN:** Foundation.

23 **THE COURT:** I think. I don't know -- I think you have
24 to lay a foundation for what it is that you want to elicit.

25 **MS. CAFFESE:** All right.

1 **MR. HEMANN:** Your Honor, if -- if Ms. Caffese wants to
2 read the statement that --

3 **THE COURT:** Do you want to read the statement?

4 **MR. HEMANN:** At the time of his plea, as long as --

5 **MS. CAFFESE:** Well, yes.

6 **MR. HEMANN:** As long as there is an understanding --

7 **THE COURT:** Well, ladies and gentlemen, maybe I can
8 explain this, here.

9 **MS. CAFFESE:** I'll --

10 **THE COURT:** Wait, let me explain something to the
11 jury.

12 Because I don't know that you are aware of this process.
13 So I'm going to explain to you the process in general, though
14 I'm not discussing this case in particular.

15 When a defendant pleads guilty, the customary procedure in
16 a Federal Court is that there is a plea agreement. And you
17 have received in evidence the plea agreement in this particular
18 case. That's not unusual. It happens, not always, but it
19 happens with some frequency.

20 Along with a plea agreement is a proceeding in front of
21 the court in which a defendant is advised of his rights, and a
22 discussion of the circumstances surrounding the plea follows.
23 So it's open, public, and part of the record.

24 And so, that's called the "plea colloquy." And that is
25 what Ms. Caffese is referring to in her questions.

1 Now, yes.

2 MR. HEMANN: We would not object to having Mr. Vargas
3 read what he said to the Court on that occasion. I think
4 that's --

5 THE COURT: There is no objection. Is that what you
6 want to do?

7 MS. CAFFESE: Well, actually, I would like to ask him
8 some specific questions --

9 THE COURT: Sure.

10 MS. CAFFESE: -- about what he --

11 THE COURT: Go right ahead.

12 BY MS. CAFFESE:

13 Q So you stated that you wanted to make an apology, correct?

14 A Yes, or a statement, yes.

15 Q Right. And you apologized to three entities. And I'm
16 referring to Page 16 of the transcript here.

17 (Witness examines document)

18 Q You apologized to the San Francisco Police Department,
19 right?

20 A Yes.

21 Q You apologized to the City and County of San Francisco, is
22 that right?

23 A Yes.

24 Q And you apologized to your former co-workers, your police
25 officer co-workers. Is that right?

1 **A** Yes.

2 **Q** But you didn't apologize to Kelsey Stewart for giving her
3 heroin; is that right?

4 **A** No.

5 **Q** And you didn't apologize to Indio for taking his money; is
6 that right?

7 **A** No, I didn't.

8 **Q** You didn't apologize to Michael Vice; is that right?

9 **A** I'm not sure who that is.

10 **Q** You didn't apologize for stealing from the people who
11 owned the Apple gift cards, for example? You didn't apologize
12 to those people?

13 **A** No.

14 **Q** You didn't apologize to Scotty Krasunik or the people that
15 owned the laptops that you stole back in February of 2010, did
16 you?

17 **A** No.

18 **Q** And you didn't apologize to Andrew Byrd, whom you
19 testified in a preliminary hearing under oath (Indicating) --

20 **MR. HEMANN:** Objection, Your Honor, foundation.

21 **BY MS. CAFFESE:**

22 **Q** Is that true?

23 **THE COURT:** Well, if the question is you didn't
24 apologize to Andrew Byrd, that is an appropriate question.

25 Anything else is not.

1 **BY MS. CAFFESE:**

2 **Q** You didn't apologize to Andrew Byrd, did you?

3 **A** I did not.

4 **Q** And you actually testified at a preliminary hearing on
5 January 6, 2010 --

6 **MR. HEMANN:** Objection, Your Honor.

7 **BY MS. CAFFESE:**

8 **Q** -- under oath --

9 **MR. HEMANN:** Hearsay and foundation.

10 **THE COURT:** Well, I don't know what the question is.

11 **BY MS. CAFFESE:**

12 **Q** You testified under oath at a preliminary hearing, dealing
13 with the arrest and seizure of evidence involving Andrew Byrd.
14 Correct?

15 **A** Yes.

16 **Q** And you lied under oath in a felony case, dealing with --
17 with that case that you were involved with. Is that right?

18 **A** If it pertains to the entry of the -- of the unit, then
19 yes. I probably -- because I don't think I ever mentioned that
20 we probably used a key.

21 **Q** Well, how about if it pertains to stealing money from
22 Andrew Byrd?

23 **A** Then by omission, yes, I did.

24 **Q** And that was a case where somebody was charged with a
25 felony. Could have gone to state prison based on what you

1 said, under oath, in a court of law (Indicating).

2 True statement?

3 **A** I think pretty much every drug case we did was a felony
4 case.

5 **MS. CAFFESE:** No further questions. Thank you, sir.

6 **MR. HEMANN:** Just a few questions, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. HEMANN:**

9 **Q** On cross-examination with Mr. Getz a little bit earlier
10 today, Mr. Vargas, you were asked about the government's
11 narrative of the case. Do you remember that?

12 **A** Yes.

13 **Q** And, you were asked whether you were charged with --
14 whether you felt to tell the truth, you had to track the
15 government's narrative of the case.

16 Do you remember those questions?

17 **A** Yes.

18 **Q** When you began -- before you began cooperating with the
19 government, so between the indictment in February of this year
20 and your plea and cooperation in October of this year, did you
21 become familiar with the government's narrative of the case
22 with regard to the Daisy and Jayme marijuana transaction?

23 **A** Yes.

24 **Q** What was the -- as you perceived it, what was the
25 government's narrative of the case with regard to the Daisy and

1 Jayme marijuana transaction?

2 **A** As I perceived it, the government's belief was that
3 myself, Mr. Robles, and Mr. Furminger were all involved in the
4 -- I guess, conspiracy to provide them with narcotics that they
5 would then intend to sell.

6 **Q** And, did -- what was your understanding with regard to the
7 government's narrative of the case with regard to whether you
8 would get money back from Daisy and Jayme?

9 **A** The government's narrative at that point was that it was
10 an intent to sell the narcotics and then split the proceeds.

11 **Q** With whom?

12 **A** With -- that was a part that didn't make sense, because
13 the government's belief was it was to split it in thirds, but
14 there was myself, Mr. Robles, Mr. Furminger, as well as Daisy
15 and Jayme, so there were kind of four parties involved. That's
16 kind of the part that didn't make sense.

17 **Q** When you came in to begin your cooperation and you spent
18 time talking to Ms. Flores and Mr. Nave (Indicating), and
19 Mr. Villazor and myself, did your description of the Daisy and
20 Jayme marijuana transaction track the narrative of the case
21 that you understood was the government's before your
22 cooperation?

23 **A** No, it didn't.

24 **Q** How was it different?

25 **A** First, with the intent to sell it and receive monies back,

1 but more importantly, that Mr. Furminger wasn't really aware of
2 it prior to it already occurring. Mr. Furminger found out
3 about it after I had already done it.

4 And in fact, I tried to really accept responsibility that
5 it was my idea and I did it. I mean yes, Mr. Robles stood
6 there next to me right outside one of the doors of Mission
7 Station when I handed her the drugs, but it was really my idea.
8 And so I tried to really delineate to them that I did it, and
9 Mr. Furminger found out only after it had already occurred.

10 **Q** So was your cooperation information with regard to
11 Mr. Furminger consistent with the then-narrative of the
12 government's case?

13 **A** No.

14 **Q** So why was it that you told a story that was different
15 from the narrative of the case?

16 **A** Because it was the truth.

17 **Q** When you -- I'm going to direct your attention, kind of go
18 in order from the beginning to the end of Ms. Caffese's
19 testimony -- examination.

20 But going back to questions that Mr. Getz asked you, I
21 want to direct your attention to the self-storage search that
22 involved Indio in November of 2009.

23 Okay?

24 **A** Yes.

25 **Q** And there were questions about Mr. Robles's and

1 Mr. Furminger's involvement in the search that day. Do you
2 remember that?

3 **A** Yes.

4 **Q** When you were out at the search site initially that day,
5 who were you with?

6 **A** I was only with Officers Greiner and Kenney.

7 **Q** Over the course of the time you were out there, were you
8 in contact with Mr. Robles and Mr. Furminger?

9 **A** Yes.

10 **Q** And how were you in contact with them?

11 **A** With cell phone, via cell phone. Text messaging or
12 calling.

13 **Q** And have you, Mr. Vargas, had an opportunity to look at
14 some of the cell phone and text records that show
15 communications between you, Mr. Furminger and Mr. Robles that
16 day?

17 **A** Yes.

18 **Q** And did those communications take place while you were
19 present at the search site but while the two of them were
20 elsewhere?

21 **A** That's correct.

22 **Q** Eventually, did the two of them come to the search site?

23 **A** Yes.

24 **Q** Why did they come to the search site?

25 **A** Because I had located a pretty decent amount of cash off

1 of Indio.

2 **Q** Whose idea was it for Mr. Furminger to go to the scene of
3 the search? And by that, I mean, did you say, "Please come out
4 to the scene of the search"?

5 Or did Mr. Furminger say, "I'm coming to the scene of the
6 search"?

7 **A** I don't recall if I told him, or Mr. Robles told him. But
8 I know I told at least Mr. Robles, "Hey, you know, this is..."
9 and this is a target we'd been working on for a couple of days.
10 "Hey, I've grabbed -- I've gotten Indio, I've arrested him
11 now. And I've got money."

12 **Q** Did you invite Mr. Furminger out? Or did he come without
13 an invitation?

14 **A** Key -- that was the -- the intent of him coming out was
15 that we were going split the proceeds of the money that we
16 found. I just don't know if it was me who invited him, or Mr.
17 Robles. But I know we were all in contact.

18 **Q** When did Mr. Robles help you move?

19 **A** Oh, this was probably in August, I imagine, of 2012.

20 **Q** And where did you move? From where to where?

21 **A** I moved from my home in the East Bay down to southern
22 California, where I've been living ever since.

23 **Q** Was that before or after Mr. Hernandez helped your
24 then-girlfriend move?

25 **A** Oh, that was probably -- gosh, it might have been almost a

1 year after. Maybe -- yeah, maybe -- could have been even
2 longer than that. A year difference.

3 **Q** So if Mr. Robles helped you move some time in 2012,
4 Mr. Hernandez assisting your girlfriend in moving was some time
5 in 2010 or 2011?

6 **A** Yes.

7 **Q** You said on cross-examination with Ms. Caffese, that the
8 reports were pretty accurate. Your police reports were pretty
9 accurate. You used that term.

10 **A** Yes.

11 **Q** Can you describe for the jury what you mean when you say
12 "pretty accurate"?

13 **A** I don't know, it's hard to justify when I'm omitting large
14 thefts and that sort of thing in the reports, but the details
15 in the reports in terms of where I was, when I was there, who I
16 was with, what I was doing, what was being said, what was
17 retrieved, where it was retrieved, at what amounts, those sort
18 of items, the details of it, those were very accurate.

19 **Q** So the inaccurate parts of the reports were -- had to do
20 with the criminal conduct that you have admitted today and
21 yesterday.

22 **A** Yes.

23 **Q** I would like to show you some excerpts, or some of the
24 documents in Exhibit 56. Remember that Ms. Caffese asked you
25 about the receipts that you gave to Cesar Hernandez? Do you

1 remember that?

2 **A** Yes.

3 **Q** Can you describe to the jury what these receipts are?
4 What they're for?

5 **A** When -- typically in using informants, one of our
6 approaches to arrest a narcotics dealer would be to send an
7 informant to a drug dealer, to do what's called a controlled
8 buy.

9 We are buying the narcotics. We provide the informant
10 with the money to buy the drugs. The informant then gives us
11 the drugs. We let the drug dealer keep the money. We then
12 book the drugs, test the drugs. Our hope also is that at times
13 we can follow the drug dealer after the transaction back to his
14 low consideration.

15 All of that to develop a probable cause to write up a
16 search warrant. Try to get -- you know, where he's keeping his
17 drugs, if it's at a house or in a car, anything else like that.
18 But basically we become the purchaser of the drugs.

19 These receipts are basically we pay them for their
20 services, providing the services of buying the drugs for us so
21 we give them money, kind of, that's their wage in a sense, for
22 doing that transaction for us.

23 (Off-the-Record discussion between Counsel and Clerk)

24 **MR. HEMANN:** Barbara, can you please put the screen on
25 for the ELMO.

THE CLERK: Okay.

MR. HEMANN: Thank you.

(Document displayed)

BY MR. HEMANN:

Q Remember we looked at this one, Mr. Vargas?

A Yes.

Q And, it describes the purposes of a controlled buy from
El Pollo?

A Yes.

Q At 18th Street and Capp Street.

A Yes.

Q Do you remember that buy?

A Um, yeah. It's pretty familiar to me.

Q And was Mr. Hernandez actually the buyer in that
transaction?

A Yes.

Q There's a signature down there, "Signature, Witness
Officer," and the name printed underneath. Do you see that?

A Yes.

Q Do you know who that is?

A Yes.

Q Who is it?

A That is Officer Kujath, K-U-J-A-T-H.

Q And in this situation, did you -- why is Officer Kujath's
name written on this?

1 **A** As part of the procedure for filling out the receipt, it's
2 usually done in the presence of another officer so there is a
3 witness to the transaction of us then paying the informant for
4 purchasing drugs for us.

5 **Q** Was Officer Kujath involved in any sort of criminal
6 activity with you?

7 **A** No, none.

8 **Q** Did you actually give \$50 to Cesar Hernandez to buy drugs
9 in this particular instance?

10 **A** In this instance, Cesar was paid \$50 for the drugs he had
11 already bought. I don't know how much money we spent on the
12 drugs, but that was Cesar's payment for the transaction. I
13 don't know how much the transaction was.

14 **Q** So this document (Indicating) shows the money that Cesar
15 would receive, sort of an informant fee?

16 **A** Yes.

17 **Q** The 50 bucks isn't the buy money.

18 **A** No.

19 (Document taken off display)

20 (Document displayed)

21 **Q** This document shows a payment of \$40, on 8-20-2010.

22 Do you -- can you recognize the signature on -- of the
23 recipient on this transaction?

24 **A** Yes.

25 **Q** Who's that?

1 **A** That's who I called "the Shah."

2 **Q** Now, there is a witness to this transaction as well. Who
3 is that?

4 **A** Yes. Officer Olson, O-L-S-O-N.

5 **Q** Were you involved in some kind of criminal conduct with
6 Officer Olson?

7 **A** None whatsoever.

8 **Q** This purchase of heroin, do you know whether this had to
9 do with Mr. Hernandez or the Shah?

10 **A** Oh, it's with the Shah.

11 **Q** Why -- you said that in a way that suggests that you --
12 you have a pretty good memory of that.

13 **A** There's a couple of reasons. First of all, the Shah,
14 besides being at times a heroin dealer, is a heroin user. So
15 if there was any drug that he would be dealing with, it'd be
16 heroin.

17 And vice-versa. Cesar really didn't deal with heroin too
18 much. He was a coke guy. So pretty much coke was his -- was
19 the drug that he would deal with and --

20 **Q** Now, under the signature there, under the Shah's
21 signature, there's a CI number, 09-08. Do you see that?

22 **A** Yes.

23 **Q** Was that the Shah's CI number?

24 **A** No.

25 **Q** Who's CI number was that?

1 **A** That's Cesar's CI number.

2 **Q** Why did you put Cesar's CI number under the Shah's
3 signature?

4 **A** Either it's an error, you know, I'm writing down the wrong
5 number, or the other reason could be that the Shah at that
6 point wasn't completely enlisted as an informant. What --
7 hadn't gone through all the paperwork yet. So I'm using a
8 valid number and filling out a valid form to justify payment to
9 him, but he doesn't have a number yet, so I'm using somebody
10 else's number. In a sense.

11 **Q** Did you actually give 40 bucks to the Shah in this
12 instance for participating in this transaction on behalf of the
13 SFPD?

14 **A** Yes, for the purchase of heroin.

15 **Q** And was Officer Olson involved in that transaction?

16 **A** Yeah, well, he was witnessing the -- the transaction of
17 the Shah getting \$40, yes.

18 **Q** Anything illegal about this?

19 **A** Um, no.

20 (Document taken off display)

21 **Q** And then finally, the one that Ms. Caffese showed you.

22 (Document displayed)

23 **Q** This one also I think you testified is the Shah's
24 signature on this. Correct?

25 **A** Yes.

1 Q And was there an officer witness to this transaction?

2 A Yes.

3 Q Do you know what this -- do you recall this transaction?

4 A I recall that, that case. And, and I recall that the Shah
5 was the informant on that case.

6 Q What does it say under the narrative there, the purpose?

7 A "Buy walk from 'José,' Third Street and..." I believe
8 that's "Yosemite."

9 Q What does "buy walk" mean?

10 A When we can locate a drug dealer that actually sells out
11 of his residence, what we try and do is send an informant into
12 that residence, buy drugs there, and walk right out.

13 And, you know, we see the informant walk in basically with
14 our money and no drugs on him. And when he exits out, he has
15 drugs on him and no money. We then logically take the step
16 that the drugs must have come in from the residence that allows
17 us to then generate -- that's probable cause for us to then
18 seek a search warrant for that residence.

19 Q Mr. Vargas, did you give sixty bucks to the Shah in
20 connection with this transaction?

21 A Yes.

22 Q Were you and Officer Sands involved in anything illegal
23 with this transaction?

24 A None, whatsoever.

25 (Document taken off display)

1 Q With regard to the Apple purchase, the Apple gift card
2 purchase at the Apple Store on Stockton Street, do you remember
3 testifying about that?

4 A Yes.

5 Q On the day of that you made the purchases, the iPhone and
6 the Nano, did you register one of the -- were one of the two
7 devices registered?

8 A Yep.

9 Q Which one?

10 A The phone.

11 Q And, to whom was the phone registered?

12 A To me.

13 Q Did you know how to register Apple devices at that time?

14 A Um --

15 Q Were you familiar with Apple devices.

16 A Absolutely.

17 Q And had you registered Apple devices before?

18 A Yes.

19 Q Did you register the Nano?

20 A No.

21 Q Why not?

22 A Because I didn't take the Nano. I didn't have it.

23 Q I would like to go briefly through your discussion about
24 whether Officer Robles was next to you at the time of handing
25 the marijuana to Daisy and Jayme. Do you remember that

1 discussion?

2 **A** Yes.

3 **Q** The first time -- do you remember the first time that you
4 spoke to the FBI, the first couple of days that you spoke to
5 the FBI, and, you know, pursuant to your cooperation?

6 **A** Yes.

7 **Q** And, do you remember during those conversations, whether
8 you were asked if Mr. Robles knew about the giving of the
9 marijuana to Daisy and Jayme?

10 **A** Yes. I believe I was asked in regards to both Mr. Robles
11 and Mr. Furminger, regarding what they knew with the
12 transaction with the marijuana.

13 **Q** And during those first -- and again, you were interviewed,
14 20th and 21st, I believe you testified, of October, and then
15 the 27th and 28th of October. Correct?

16 **A** Yes.

17 **Q** During the first couple of days, is that when you were
18 asked about their knowledge of the marijuana hand-over?

19 **A** Yes.

20 **Q** When you were interviewed the following weekend, were you
21 asked whether either of them was actually present during the
22 hand-over of the marijuana?

23 **A** Yes.

24 **Q** And what did you say at that time?

25 **A** At that time I described that Mr. Robles was standing next

1 to me, and Mr. Furminger wasn't there at all.

2 **Q** Now, did those two events -- when did the those two events
3 happen in relation to your actual -- the entry of your plea in
4 this courtroom?

5 (Document displayed)

6 **Q** And you're looking at what document up there?

7 **A** I'm looking at the date of the plea agreement, which was
8 the 21st of October.

9 **Q** May I take this for a moment?

10 On the 21st of October, you entered a plea to this plea
11 agreement -- pursuant to the plea agreement, in this courtroom.
12 Correct?

13 **A** Yes.

14 **Q** And let me ask you just a moment about the negotiation of
15 this plea agreement.

16 As to the -- the terms of this plea agreement, was there
17 an active back-and-forth negotiation? Or was the plea
18 agreement the plea agreement?

19 **A** There wasn't really any negotiation at all. I was told
20 this was the plea agreement, and that's it.

21 **Q** Were you given a choice about the -- the terms that were
22 -- that were offered to you in this plea agreement?

23 **A** My choices were to plea or -- or not. And that was it.

24 **Q** Ms. Caffese showed you a --

25 **MR. HEMANN:** Barbara, may I have the ELMO again?

1 (Document displayed)

2 **MR. HEMANN:** Thanks.

3 **BY MR. HEMANN:**

4 **Q** A couple of lines of this plea agreement. And if it's
5 okay, I will just read the last line of the paragraph that
6 begins "In 2009," says -- and this is the original I'll read
7 (As read):

8 "Robles, D.B. and J.W. were aware of and agreed to
9 the plan at the time..."

10 I'm sorry.

11 "...before I gave the marijuana to D.B. and J.W.;
12 Furminger found out what I had done shortly
13 thereafter."

14 Do you see that?

15 **A** Yes.

16 **Q** Was that language that was negotiated between your
17 attorney and the United States prior to the plea agreement?

18 **A** Yes.

19 **Q** There's a change there, that says "at the time." How did
20 that change -- first of all, where were you standing when that
21 change came about? Do you remember?

22 **A** Yes. I was standing at the defense table there
23 (Indicating).

24 **Q** Right over here where Mr. Getz is sitting now?

25 **A** Yes. Sitting basically probably where Mr. Furminger is

1 now.

2 **Q** And so, how did that change from "before" to "at the time"
3 happen?

4 **A** I got the attention -- when -- going through the agreement
5 and reading it line by line, I came to this point. And I got
6 my attorney's attention, and basically told him that that
7 wording was wrong. That Mr. Robles wasn't aware of what I was
8 doing beforehand. He basically found out at the moment.

9 And so I just kind of -- I got his attention. And my
10 attorney then walked up to you and raised this issue. And then
11 we kind of discussed a change of the wording to better reflect
12 what actually occurred.

13 (Document taken off display)

14 **Q** You were asked some questions about your characterization
15 of some of your criminal conduct as a "crime of opportunity."
16 Do you remember that?

17 **A** Yes.

18 **Q** Do you believe in any way, Mr. Vargas, that you are less
19 guilty because these were crimes of opportunity than they were
20 other crimes?

21 **A** No.

22 **Q** Why not?

23 **A** Because ultimately, the crime is the crime. Whether I
24 went into the location with the intent to steal or in the midst
25 of searching discovered that there was money that I thought I

1 could potentially get away with, the end result was that I took
2 the money or took property or anything else that I did
3 illegally and during this period.

4 And so, I'm wrong; what's wrong is wrong. You know,
5 whatever my intent was going into it, the net result is that
6 it's illegal, and I did that.

7 **Q** And was your intent different at different times,
8 depending on different circumstances?

9 **A** Absolutely.

10 **Q** How so?

11 **A** As I was kind of just explaining now, when we went into
12 these locations and went to effect these arrests, we didn't
13 realize what we were getting into. Oftentimes we went into
14 locations, and got nothing. Oftentimes we went into locations
15 and retrieved money and drugs, and all of it was booked.
16 Sometimes only a portion of the money was booked, or -- or none
17 of it was booked. It all kind of -- each instance depended on
18 its own individual circumstances. There was not a
19 tried-and-true pattern or rule to any of this stuff.

20 And so at a certain point, if I thought there was
21 something there that I -- that I, whatever, needed or wanted,
22 or wanted to take and thought I could get away with it, I would
23 try, or I would. Or if I didn't, then I wouldn't touch
24 anything at all.

25 And so that, in a sense, is what I -- I'm trying to

1 describe when I use that word, "opportunity."

2 **Q** Do police officers frequently find themselves in
3 situations in which these kind of opportunities arise?

4 **A** Absolutely.

5 **Q** And do you believe it's a real violation of your oath to
6 do what you did while acting as a San Francisco Police Officer?

7 **A** It's an absolute perversion of the oath.

8 **MR. HEMANN:** Thank you.

9 **RECROSS EXAMINATION**

10 **BY MR. GETZ:**

11 **Q** When you talked to Daisy Bram and handed over the
12 marijuana, and you described how you were feeling an altruistic
13 mood -- do you remember that testimony?

14 **A** Yes.

15 **Q** And you said to her, "You can sell this marijuana, but
16 25 percent for you, 25 percent for me, 25 percent for Robles,
17 25 percent for Furminger."

18 Right?

19 **A** No.

20 **Q** What did you say?

21 **A** I told them, "Here. Do..." you know, "Get a hotel, feed
22 yourself." You know, "do something."

23 **Q** Did you see, when you went through the police reports on
24 this case, that Daisy Bram reported to the prosecutors here
25 that you told her, 25 percent for her, 25 percent for you,

1 25 percent for Robles, and 25 percent for Furminger?

2 Did you see that?

3 **A** No.

4 **Q** You never saw that report?

5 **A** No. I thought, actually, that she had said that I had
6 threatened her to sell it. But no, I don't recall that, seeing
7 that at all.

8 **Q** When it came time for you to make a deal, you really had
9 two choices, didn't you? You could plead to what you were
10 charged with, and be sentenced, or you could do a cooperation
11 agreement. Am I right?

12 **A** I believe I had three choices.

13 **Q** What was the third choice?

14 **A** Stick with not guilty, and -- and take my chances in
15 trial.

16 **Q** Well, you already said that you were tired of lying. Do
17 you remember that?

18 **A** Right.

19 **Q** You had, you know, kind of a reverse. Instead of a -- you
20 know, a period of your time when you were able to do it, you
21 said earlier today, you didn't want do that anymore. Am I
22 right?

23 **A** Correct.

24 **Q** And, do you remember the part in your testimony when you
25 said you couldn't remember when you started to commit these

1 crimes? You just remember somebody put some money in your
2 pocket?

3 Right?

4 **A** I remember a general period of time, but not an exact
5 time. That's correct.

6 **Q** Yeah. You can't remember when you first started to
7 violate the oath, can you?

8 **A** No.

9 **Q** You can't tell us the one time where you crossed over,
10 where you went from being a good officer to a corrupt officer.
11 You won't tell us when that was, will you?

12 **A** I can't tell you, no.

13 **Q** Okay. But don't you think, if you were what you said,
14 that you were a good officer, and all of a sudden you crossed a
15 line, how could you not possibly remember that moment? That
16 moment when you went corrupt? How can you not remember that?

17 **MR. HEMANN:** Objection. Argumentative, Your Honor.

18 **THE COURT:** Well, I'll allow it. Go ahead.

19 **THE WITNESS:** I don't know.

20 **BY MR. GETZ:**

21 **Q** Let's talk about the time when you were tired of the
22 lying, and you decided you wanted to settle this case, resolve
23 it with the government. Hopefully to get less time than you
24 otherwise would if you went to trial. Right?

25 **MR. HEMANN:** Your Honor, I believe this is asked and

1 answered, and beyond the scope of redirect.

2 **THE COURT:** Beyond the scope.

3 **BY MR. GETZ:**

4 **Q** You could have pled guilty without a cooperation
5 agreement. Right?

6 **A** That was an option available to me, yes.

7 **Q** But you wanted to get something for your testimony, didn't
8 you?

9 **A** Actually I wanted to just get this all off my chest.

10 **Q** You wanted to get less time for your testimony, did you
11 not?

12 **A** Initially when I started talking, um, with the U.S.
13 Attorneys, no.

14 **Q** I'm not asking about initially, Mr. Vargas. I'm asking
15 about the time you decided instead of just pleading guilty, you
16 would plead guilty with a cooperation component.

17 Do you remember that?

18 **A** That's what I'm telling you. That's when I -- when I
19 initially started those discussions with them, no.

20 **Q** And now you've got what you negotiated for. You're
21 performing right now, aren't you?

22 **A** I'm testifying to the best I can right now, yes.

23 **MR. GETZ:** Thank you.

24 **THE COURT:** Anything further?

25 **MS. CAFFESE:** No further questions, Your Honor. Thank

1 you.

2 **THE COURT:** Anything further?

3 **MR. HEMANN:** Thank Your Honor. Thank you. Nothing
4 further.

5 **THE COURT:** No. Okay, thank you. You are excused.

6 (Witness excused)

7 **THE COURT:** Well, ladies and gentlemen, ten to 4:00.
8 And, I think we will rest for the day. Actually, we are
9 resting for the week, because we are not meeting Wednesday,
10 Thursday, or Friday. And we are resuming on Monday. Monday
11 and Tuesday, we will have trial.

12 I think we are moving along rapidly. I will discuss with
13 you on Monday next what I think the schedule is going to be, so
14 that you can prepare accordingly.

15 Since it's a long period of time, I just want to reiterate
16 the fact that you are not to -- the admonition I've given you:
17 You are not to discuss the case, allow anyone to discuss it,
18 form or express any opinion.

19 I fully expect that there will be newspaper reports.
20 There could even be television mention of the case. And again,
21 let me caution you not to read the articles, not to listen to
22 the news, the TV reports, if there are any. Sometimes that's
23 impossible. Sometimes it's -- you're simply -- it's simply
24 thrust upon you. But if it is, I think that you should choose
25 to ignore it.

1 Obviously, if you heard things about the case that you
2 should not have heard, you should tell Barbara about it, and
3 we'll explore.

4 We're at a particularly critical juncture. A lot of
5 testimony has gone on. You have invested a great deal of time.
6 And, I do not want anything to occur to prevent you from
7 ultimately rendering a verdict, if you are able to do so.

8 So, that depends on your being vigilant, your following
9 the Court's instructions, your exercising whatever discipline
10 you have to exercise -- it may be nothing, and it may be
11 something -- to make sure that you are fair, impartial judges
12 of the evidence.

13 You will see, as the case progresses, that when you hear
14 more evidence or not, or when you hear argument, and especially
15 after I instruct you on the law, when you hear the views of
16 your fellow jurors, that will play a role in determining what
17 verdict you should render. None of that has happened now.
18 You've heard some things, but you haven't heard everything.

19 So, I just want to tell you that the best thing you can
20 do -- which sounds almost impossible to do -- is not to think
21 about the case. Think of it in terms that you've heard some of
22 it, but not all of it. And that you're going to reserve
23 judgment until you hear all of it, and the views of your fellow
24 jurors.

25 If you do that, while it sounds like it maybe require some

1 mental gymnastics, it actually is an answer to the question of
2 whether you should keep on thinking about the case. If you can
3 say -- and I sort of do that in all sorts of things. I say,
4 "Well, I don't have to decide today; I can postpone that until
5 tomorrow," and then I think about something else.

6 So maybe you can grab on to something else that you can
7 fill that void which would be created by your not thinking
8 about the case.

9 Anyway, I thank you; you are extraordinarily vigilant. We
10 will start sharp at 9:00 on Monday. And, please leave your
11 binders on the seats; leave your notebooks in the jury room.
12 And, have a pleasant three days.

13 (Jury excused)

14 (The following proceedings were held outside of the
15 presence of the Jury)

16 **THE COURT:** Okay, let the Record reflect the jurors
17 have retired.

18 So, of course, my question is: Where are we? And, let's
19 talk about a schedule.

20 **MR. HEMANN:** Mr. Villazor and I believe that we will
21 be done by noon on Monday.

22 **THE COURT:** Good. Okay. So, that means we will
23 commence the defense case Monday.

24 And, how do you want to proceed? I don't know whether
25 Mr. Getz goings first, Ms. -- I don't care. Just --

1 **MR. GETZ:** I'll confer with Ms. Caffese about that.
2 And we will design a format, hopefully, that will please the
3 Court.

4 **THE COURT:** Well, I'm hopeful in that regard, too.
5 But -- and you have not disappointed me yet in this case.
6 However, I think I'd like something a little bit more definite
7 to tell the jury, as "Don't worry, be happy. It's going to all
8 work out."

9 Like, you know what? What -- when's the case coming to an
10 end? That sort of thing. I think actually, they're sort of
11 interested in that.

12 **MR. GETZ:** Well, I think there are a couple of things.
13 First of all --

14 **THE COURT:** Yeah. And I know you have to make
15 decisions, and I know also you don't want to make decisions
16 until after the government has rested. So, I'm appreciative of
17 that fact.

18 **MR. GETZ:** Well, I think -- I think that's right. And
19 I would add to that, the fact that both Ms. Caffese and I have
20 filed witness lists. And as is often the case around this time
21 of the year, I have received a lot of phone calls from my
22 witnesses, complaining that they had vacation plans or they
23 wanted to go somewhere for vacation that week.

24 So, one of the reasons why I can't answer the Court more
25 precisely is because I'm trying to figure out who will be

1 available Monday afternoon, and Tuesday, since the Court
2 indicated those are the only two days the defense will need to
3 go forward next week.

4 So, I think if I had a couple more days to sort it out
5 with the witnesses, I could be more --

6 **THE COURT:** Okay. Well, let me just set -- that's
7 fine. Let me just set a couple of ground rules.

8 First of all, I want to go all of Monday and all of
9 Tuesday.

10 **MR. GETZ:** Right.

11 **THE COURT:** That is to say, I -- I want you to have
12 whatever witnesses you can take. There is no order to the
13 witnesses. There's no order between yourselves. That is, I'm
14 sensitive to the fact that, you know, you may want it in a
15 particular order.

16 You can do whatever you want. I'm not formally saying,
17 "Okay, Mr. Getz, you present your case first," or "You present
18 your case second." You can interchange, depending on witness
19 availability, depending on any -- any concerns that you may
20 have.

21 But the thing is that I don't want, as they say, to wake
22 up Tuesday at 10:00, or 1:00, and find out there's just nobody
23 there. I think a couple of things have to be determined in
24 advance. And, and I think you'll have to -- because at that
25 point, I will ask you whether or not your clients are going to

1 testify. If they are, and you don't have other witnesses, I'm
2 going to have them testify, either one or both, at that point.

3 So, that's -- I say that not as a -- to threaten you. I
4 simply say that, that I want to just have receiving out in the
5 open so that nobody is surprised about anything. And you guys
6 are seasoned, seasoned lawyers. So you would -- you might
7 anticipate that.

8 I would also say to you that you should tell the
9 government by close of business Thursday who is going to
10 testify on Monday, and Tuesday. All right?

11 **MR. GETZ:** I think that's fair. And we will do that,
12 to the extent that we know. And I think the government has
13 been very generous in identifying witnesses well in advance of
14 the deadline. So we will try to do that.

15 I also wanted to mention that with the Court's permission,
16 I want to file a premature Rule 29 motion, so that the written
17 motion is before the Court when the government rests, and I
18 don't have to interrupt to make that motion.

19 **THE COURT:** And the way I deal with it is that you can
20 simply make an oral motion. I mean, at the conclusion of the
21 government's case you can make the motion; you don't have to
22 argue it.

23 That's true of both Defendants. Just as long as you do --
24 you do have to make the motion. But you don't have to argue
25 the motion at that point.

1 Now, just so we know the rest of the schedule, though, I
2 think I've said it already. Crazy schedule. Again, my fault.
3 The first week in December we have court December 1st, December
4 2nd. And December 5th. Friday. The 5th of December. Because
5 I'll be back from Charlotte -- wherever I'm going. So totally
6 confused, I don't even know where I'm going.

7 I'll be going for -- back from the East Coast the night of
8 the 4th. So, I'll be available for trial on the 5th. So, we
9 need three days in the first week of December. Depending on
10 witnesses and so forth.

11 And by the way, I'm not going to -- if we happen to get
12 into argument at that point, if that's where we are, I want all
13 the argument to be done at one time, with the parties. I need
14 to go over instructions and so forth.

15 So I'm not going to truncate, you know, have the
16 government give its argument, and then a week pass, and then
17 you give an argument, and then somebody else give an argument
18 two days later and three days later. No.

19 I mean, I think the very least you can expect out of this
20 case from me is a coherent -- an opportunity to present a
21 coherent argument, all together, with both sides. And so, I
22 will arrange that. I'll just figure out how to do that. Okay?

23 **MR. GETZ:** (Nods head)

24 **THE COURT:** But that depends on where we are in the
25 case. I have no idea, I mean, where you are going to be.

1 So anyway, three days in that week. The 1st, 2nd and 5th.
2 And then, I think I'm coming back the night of the 10th, so
3 then there's the 11th and 12th of December. Thursday and
4 Friday. And then the following week, which I've promised the
5 jurors that the case would be over by then.

6 **MR. HEMANN:** Seems like we will be done well before
7 then.

8 **THE COURT:** I think we'll be done well before then.

9 **MR. HEMANN:** Your Honor, if I can ask, the only
10 potential hiccup there is that if Ms. Caffese and Mr. Getz
11 decide to call few or no witnesses, and we're done Monday, or
12 early Tuesday. And I don't know whether -- I mean, things like
13 this have happened before.

14 **THE COURT:** Sure.

15 **MR. HEMANN:** So I'm just wondering whether -- you
16 know, we obviously have closings to prepare as well as jury
17 instructions to deal with. And I'm just wondering, if that
18 came to pass, whether the Court would anticipate that we would
19 be arguing on that Tuesday --

20 **THE COURT:** No, no; I wouldn't do that to you.

21 **MR. HEMANN:** Okay.

22 **THE COURT:** In other words, even -- if you were to
23 rest on Monday, I would do jury instructions on Tuesday and so
24 forth. And I would then kick over the argument to December 1st
25 and 2nd.

1 **MR. HEMANN:** Okay.

2 **THE COURT:** You know, I want you to -- the argument --
3 I believe argument can be all done in one day, but I -- you
4 know. It depends. Right? It depends.

5 So, we'll try to figure it out. The guiding light is that
6 you -- is that I want -- as a general rule, unless some
7 extraordinary circumstance, I would very much want the jury to
8 commence its deliberations at the conclusion of the argument.

9 I don't think a lot of gained by, you know, four days of
10 pause. But, I don't know how it's going to end. And there are
11 too many permutations here.

12 **MR. HEMANN:** Your Honor, will you have the jury
13 deliberate in your absence?

14 **THE COURT:** It might.

15 **MR. HEMANN:** Okay.

16 **THE COURT:** It might. I mean, you know --

17 **MR. HEMANN:** As much as we would like you here, that
18 would be our request, Your Honor. To have them go -- as soon
19 as argument's done, until they're done, and have another judge
20 sit in. Just because it's --

21 **THE COURT:** Well, the way -- well, I don't like to do
22 that. But, but, if it comes to that, I'll probably do it,
23 provided that I can remain in contact with all of you, which
24 really means through telephone appearance.

25 In other words, I think it's rough to give some other

1 judge the task of readbacks or answering questions or that sort
2 of thing. However, I'll just do what I can do. I just don't
3 know.

4 No promises one way or the other. Except the promises
5 that you all get to argue at the same time. Not
6 simultaneously, but, but within...

7 So, any questions? Mr. Getz? Do you have any questions?

8 **MR. GETZ:** Yeah, I had a question --

9 **THE COURT:** Yeah.

10 **MR. GETZ:** -- about argument. Since Mr. Passaglia and
11 I have split the witnesses, I would like him to have part of
12 the opening -- part of the closing argument.

13 **THE COURT:** Fine.

14 **MR. GETZ:** Thank you.

15 **THE COURT:** Ms. Caffese.

16 **MS. CAFFESE:** Thank you, Your Honor. Thank you.

17 I would renew my request to be permitted to call Officer
18 Hilder as a witness. And Officer Hilder would be testifying to
19 the falsification of the time cards, time sheets that were
20 referred to by Mr. Vargas during his examination.

21 **THE COURT:** And, that request is denied.

22 **MS. CAFFESE:** Thank you.

23 **THE COURT:** Anything else?

24 **MR. HEMANN:** Not from the government, Your Honor.

25 **MR. GETZ:** Not for Mr. Furminger.

1 **MS. CAFFESE:** No.

2 **THE COURT:** Okay. Great. Okay. So, I'm sure you
3 will have a relaxing three days, and I'll see you all on Monday
4 morning.

5 **MR. HEMANN:** Thank you, Your Honor.

6 (Proceedings concluded)

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CERTIFICATE OF REPORTERS

I, BELLE BALL, and I, KATHERINE SULLIVAN, Official Reporters for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball 

Wednesday , November 19, 2014

Belle Ball, CSR 8785, CRR, RDR


/s/ Katherine Sullivan

Wednesday , November 19, 2014

Katherine Sullivan, CSR 5812, CRR, RMR